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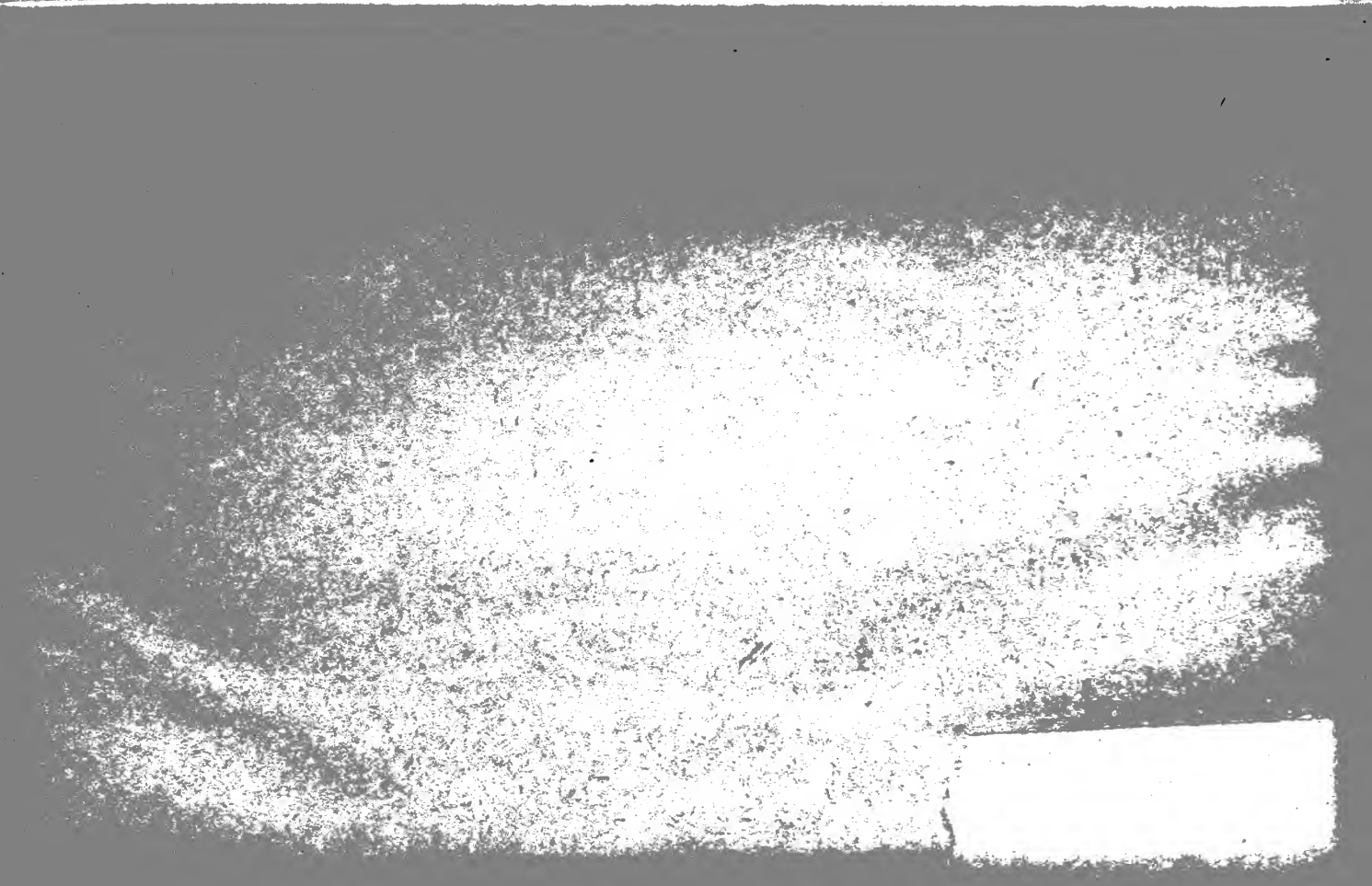


A TREATISE

ON

BUSINESS LAW,

WITH

FORMS OF ORDINARY LEGAL AND BUSINESS DOCUMENTS.

DESIGNED FOR USE IN ALL SCHOOLS IN WHICH THE

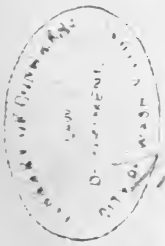
COMMERCIAL BRANCHES ARE TAUGHT

AND AS A

BOOK OF REFERENCE

FOR

BUSINESS MEN.



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PREFACE.

The importance of the subject of Business Law as a feature of a course of commercial studies is too generally recognized to need enforcing here. To what extent it shall be taught and what is the best way of teaching it, are the only questions to be settled.

This book has been prepared with a view to providing those schools which desire to teach the more important topics in this subject a suitable text-book. The work is brief, yet, owing to the terseness with which the principles are stated, it is fairly comprehensive. It is believed that no other work now in print contains so much information on the subject of commercial law in so compact a form.

Legal technicalities have been avoided, except in the list of definitions at the end of the book, and the illustrations are of the most practical character.

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INTRODUCTION.

The Reason for Commercial Law. — Nations have rules governing their conduct with each other, called *International Laws*. Each nation enacts laws, called *Statute Laws*, governing the conduct of its citizens, toward each other as citizens, and toward the State. For the same reason, men, in their private business transactions and dealings with each other, find it necessary to have law to go by.

The Source of Commercial Law. — It came from England. The colonists brought it with them, and when they finally reduced the whole country to English sway the *Common Law* of England became the law of the United States of America.

The Origin of Commercial Law. — Custom brought it about. Merchants transacted their business in an accustomed way so long that the custom gradually became the law from which no man could depart. Men exercised rights in an accustomed way, over articles of personal property or over land, for so long a time, that their rights began to be respected by others, and finally those rights, including the manner in which they had exercised them, became recognized law.

Statute Law.—It is frequently found that the rules of the common law, while adapted to the condition of things in England, will not answer for the United States. The remedy is by statute laws. They are laws enacted by the Legislature of a State and they overrule the common law. The rules of law given in this book are mainly common law rules. There are some statutes, however, which have been so universally enacted by the several States, as to constitute almost uniform laws. Whenever the common law has thus been abrogated, altered or supplemented, a knowledge of the subject matter of the statute law is equally necessary.

CONTRACTS.

When You Make a Contract. — When you buy or when you sell, when you make any kind of a bargain or agreement, it is a contract. In short, whenever for a sufficient consideration, you agree to do or not to do a particular thing, you make a contract. You may say that you have made a purchase, or have accepted a position, or call it what you may, you have simply made a contract. The only question is the particular kind. In the first case, it is a contract of sale. In the last case, it is a contract of hiring of service.

Division of Contracts.—Contracts are divided into :

1. Contracts by specialty, always written.
2. Parol contracts,
   1. Written, always express.
   2. Oral, either,
      1. Express, or
      2. Implied.

HOW YOU MAY MAKE A CONTRACT.

By Word of Mouth. — The vast majority of contracts are made by means of spoken words and are called *oral contracts.*

By Writing. — When the terms of agreement are put in writing or printed or otherwise expressed on paper and signed, it is a *written contract.*

By Specialty. — If seals are affixed after the signature on a written contract, as in a deed or mortgage, it becomes a *contract by specialty.* In our day the seal adds very little weight to a contract. In the days of old, when men could not read or write, and they put their names to a contract by impressing their seal in melted wax, it had some practical use. Nevertheless, the statutes of most States require seals on certain classes of instruments, like deeds and mortgages, and whenever required they must be affixed. In some States a scroll made with a pen will answer.

KINDS OF CONTRACTS.

Oral and Parol Contracts.—Observe the difference between *oral* contracts and *parol* contracts. Well educated people sometimes confound them, owing to the similarity in the derivation of the two terms. A parol contract is any agreement not sealed. It may be written or oral.

Express and Implied Contracts.—Observe the terms *express* and *implied*, as applied to contracts. If all the terms and conditions of the contract are fully spoken or written it will be express. If something is left unsaid, which ought to be said in order to make a complete contract, the law will imply what is unsaid and the contract will be an implied contract. If you say to the grocer: "Send me a pound of full cream cheese at twenty-five cents per pound and I will pay for it on delivery," you make an express contract. If you say: "Send me a pound of cheese" there is to be implied that you will pay for it, at the market price when it is delivered, and that the cheese shall be merchantable cheese.

Executed and Executory Contracts.—Observe the difference between *executed* and *executory* contracts. If you pay for the cheese and take it away with you, that is a finished transaction. It is an executed contract. If it is to be sent to your house, it is an unfinished contract, or an executory contract. It still depends upon the cheese being actually delivered. Something remains to be done, and that makes it an executory contract.

THE FOUR ELEMENTS OF A CONTRACT.

Meaning of Elements.—This means simply, that there are four things, or conditions, which must exist in order to form a valid contract. These necessary conditions are:

1. Parties.
2. Their consent.
3. A lawful consideration.
4. The subject matter.

PARTIES.

Their Age.—The parties to a contract must be of full age. The law had to fix upon some arbitrary age, before which a

person must be considered an infant or minor, and after which an adult, and the age of twenty-one was selected. Some States, however, have enacted statutes whereby females, resident there, cease to be infants at eighteen. Infants or minors, therefore, belong to the class of incompetent persons.

Incompetent Persons, are persons having no legal capacity to make a contract. The reasons for such incapacity and their divisions are :

1. By reason of legal disability,
   1. Infants.
   2. Married women.
   3. Alien enemies.
2. By reason of natural disability,
   1. Idiots.
   2. Lunatics,
   3. Drunken persons.

CONTRACTS BY INFANTS, MARRIED WOMEN AND ALIEN ENEMIES.

An Infant's Contracts for Necessaries.—An infant is said to be incompetent to make a contract. Contracts for necessaries are an exception. (1) An infant may buy such articles of food and clothing as are proper and necessary for the station in life in which he has been brought up and to which he belongs. He may contract for such, (2) board, (3) medical attendance, and (4) schooling as are suitable and proper, and all such contracts will be binding, to the extent of the fair market value of what is furnished. All this is providing his parents or guardian unjustly fail to support him. But if he run away from home without cause, he is unable to make a binding contract. The tradesman who takes advantage of a minor and charges him an exorbitant price, cannot lawfully collect his bill, even though the minor agrees to pay it; nor can the tradesman keep more than the reasonable value, if the minor has paid it. The articles purchased must be suitable to the minor's station in life. It doesn't stand to reason that the son of a day laborer could buy a five hundred dollar watch and bind his father to pay for it, notwithstanding his father had turned him adrift in the world.

An Infant Disaffirms or Ratifies his contracts on coming of age. The law doesn't say he shall not make any contracts except those for necessaries. It says that if he does they are voidable at his election. Within a reasonable time after coming of age he must repudiate them. If it is in his power he must restore to the other party whatever he has received from him. If he fails to do this he takes the chance of ratifying the contract by his silence; and he always ratifies it, (1), by expressly recognizing it; (2) by partly performing it; and (3) by retaining the benefit or proceeds of it.

"Pleading the Baby Act" is the rather inelegant expression used by lawyers, when a man who is sued for failing to keep an agreement, defends the suit on the ground that he was under age when he made it. It is not considered manly or honest. The adult person dealing with a minor is bound by the agreement, and cannot back out on the ground that the other is a minor. The minor cannot waive his rights of infancy by any possible form of agreement.

An Infant's Wrong Doings are just as punishable as the wrong doings of an adult. For instance, if the infant induce an adult to make a bargain with him by fraudulently representing to him that he is of age, even though the bargain might not be good in law, he is not only bound by it, but is punishable for making it. If he commits an assault and battery he is liable in a civil action for damages, and is liable to be punished for the crime.

Contracts of Married Women.—The common law of England, as brought over and established by our forefather colonists, forbade a married woman to make a contract. An unmarried woman of full age could be a party to a contract, and so could a widow. A married woman's interests were considered to be so thoroughly joined to those of her husband as to give her no power to make a contract. It was the disability of *coverture*. The woman's legal personality was united and merged in that of her husband.

The Legislatures of most States have since enacted statutes doing away with this disability of the wife, to a greater or less extent. In nearly all the States a married woman can now

transact and carry on whatever business she chooses in connection with her estate and her affairs.

Alien Enemies.—Under the same class as infants and married women are alien enemies. Citizens of nations which are at war with each other are not allowed to carry on business intercourse. The policy of this is to keep the citizens of each nation attached to their own country, and to keep their interests adverse to the interests of the citizens of the other nations.

CONTRACTS BY IDIOTS, LUNATICS AND DRUNKEN PERSONS.

Natural Disability is said to be the cause why these persons cannot make a valid contract. They cannot understand the effect of the agreement and consequently ought not to be bound by it. Observe the difference between the contract of an idiot and the contract of a lunatic. In the eye of the law the idiot is wholly deficient in understanding. He is not supposed to have a glimmer of reason. It is not always so with a lunatic. It is sometimes a pretty nice question, as to when a person is a lunatic and incapable of transacting business and when he has sufficient reason to understand the nature and effect of an agreement, although his mind may not be as clear as an ordinary mind. This is the distinction: An idiot is devoid of understanding from birth; a lunatic is born with understanding, but has afterward lost it. There is a way, therefore, of legally fixing the time when the lunatic has become such, while such a way is not necessary in the case of an idiot. The idiot is incompetent from birth. A lunatic is not incompetent until adjudged so by due process of law. His contracts and obligations bind him until then. They are valid until his insanity has been judicially established, and thenceforth he can make no valid bargain.

Therefore, contracts made before a person has been adjudged insane are not absolutely void, but are voidable. They remain in full force and effect until they have been disaffirmed by the lunatic or his guardian.

Necessaries.—The same remarks apply to the contracts of an idiot or a lunatic, for necessaries, as in case of an infant.

The law will hold such contracts valid. The same may be said of contracts which a lunatic may make during a period called a lucid interval, which occurs in some forms of insanity when the person is sane for a short time.

Drunken Persons.—Complete intoxication destroys the reason just as much as lunacy or idiocy. The drunken person is just as incapable of making a valid bargain, as the lunatic or idiot. The drunkard may make a bargain, but it is voidable as in the case of a lunatic. It may be ratified or disaffirmed when the drunkard becomes sober; but after he has been adjudged an habitual drunkard, he is as completely incompetent as an adjudged lunatic.

Drunkenness as in case of infancy, is no defense for wrong doing. While partial drunkenness does not render one incapable of making a contract, yet it is always material when the question arises whether the drunkard has been defrauded.

Committees or Guardians.—The law provides for the appointment of representatives of infants, idiots, lunatics and drunkards who are called *committees* or *guardians*. The property and business of the incompetent person is placed in the hands of such committees or guardians who are lawful officers of the court, and make bargains for the incompetents by and under the direction of the court.

THE CONSENT OF THE PARTIES.

It takes Two to Make a Bargain.—This is the popular way of saying that all the parties to the contract must mutually assent to its terms. Mutual assent is the second condition of a valid contract. When the parties mutually consent, then their minds are said to meet. If one party is misled, intentionally or unintentionally, by the other, or, if there is a clear misunderstanding of the terms of the agreement, their minds do not meet. There is no assent. One is thinking one way while the other thinks another way. This will not make a contract. Both must think the same way.

How Minds Meet.—One party makes a proposition; the other accepts it. There is (1) a proposition; (2) its acceptance or, the assent to it. They are called the offer and ac-

ceptance. The offer is not binding — it has no effect—until it is accepted.

The Acceptance Must be Unqualified.—The minds of the parties do not meet if the acceptance is in any way qualified. If there are any conditions imposed by the person accepting there is no assent, until the conditions have been met or performed. The parties must assent to the same thing in the same sense.

How the Proposition May be Made and Accepted.—(1) By word of mouth, (2) by writing, (3) by signs, (4) by silence. Silence gives consent very frequently in every day affairs.

When the Proposition is Accepted.—If the proposition is made by mail or telegraph, it is accepted when a letter of acceptance is posted or when a telegram of acceptance is left at the telegraph office to be forwarded. It may be hours or days before the man who makes the offer knows that it has been accepted. He must keep it good, even though the letter or telegram goes astray and does not reach him. That is his risk. If the offer is conditional on an acceptance by return mail, the acceptance must be sent by the next mail. If there is no time for acceptance stated in the offer, the letter must be posted within a reasonable time. If the offer is made by word of mouth it should be accepted then and there. If the party who makes it goes away, it may be withdrawn, unless time is given to think about it.

The Assent Must be Free-will.—One who is threatened with bodily harm or with *illegal* imprisonment, or stands in fear of personal danger, is not bound by his agreement. It is *duress,* and he is said to be *under duress.* He does not make the contract of his own free will. Money paid under duress may be recovered. Legal imprisonment or confinement, or the fear of such, is not duress.

The Assent Must be Fairly Obtained.—Fraud vitiates or makes void every agreement. A contract or the assent to a contract, obtained by fraud, is voidable. The minds of the parties do not meet, when fraud is practiced. The party upon whom the fraud has been practiced, may disaffirm the contract immedi-

ately on discovering the deceit, or he may overlook the fraud or deceit and ratify the contract if he chooses. Where there is a mutual mistake as to the terms of a contract, the law will declare it void on the application of either party.

Definition of Fraud.—Fraud is any act, sign or language which one person uses to obtain an unfair advantage over another. It may consist in silence or concealment where an explanation ought to be made. It is more frequently active misrepresentation. A vendor or seller has no right to remain silent about a defect in the property he is selling, which is well known to him and cannot be known to the vendee or buyer. Especially is this so if the vendee relies on the vendor to communicate the true state of facts.

Ignorance of Fact and of Law.—The validity of an agreement depends on whether the parties know what they are agreeing to do. If there is any misunderstanding, there is no assent. Their minds do not meet. By misunderstanding is meant, ignorance of what a party is agreeing to do, which is ignorance of fact. It does not mean ignorance of the legal liability which he incurs. That is ignorance of law.

Illustration.—Suppose that you have a rich uncle in South America and you are his only heir at law. He dies but you are ignorant of it, and a speculator offers you five hundred dollars for your interest in your uncle's estate. It is worth thousands. You think that a certainty is better than an uncertainty and accept the offer. Your ignorance of your uncle's death is ignorance of fact, and you can refuse to carry out the bargain. If you know he is dead and that you are his only relation, but do not know that you inherit his property, it is ignorance of law. You are bound by your agreement. Ignorance of fact excuses. Ignorance of law does not excuse. "Every man is presumed to know the law."

THE CONSIDERATION OF A CONTRACT.

A Lawful Consideration is another necessary condition or element of a contract. It is the reason why the parties make the contract, or it is the inducement which leads them to bind themselves by the contract. An agreement without any con-

sideration to support it, is void. The payment of money by one party to the other is most frequently the consideration of an agreement.

A Sufficient Consideration is not necessarily the transfer of money. It is either

1. Good, or
2. Valuable { 1. A benefit to the promisor, 2. A loss, or inconvenience to the promisee.

A Good Consideration, consists in natural love and affection, between near relatives. When natural love and affection impels a father to deed a house and lot to his child, there is a good consideration for the deed.

When Sufficient.—A good consideration is sufficient, as between the parties, to uphold a contract which has been finished. After the father has delivered the deed, he cannot get the property back.

When Insufficient.—(1) A good consideration is insufficient when other persons would be defrauded if the contract were allowed to stand. The father might deed the place to his child, just to put it out of his hands so that his creditors could not get it. In that case they could have the deed set aside. The rights of third persons intervene. (2) A good consideration is insufficient to uphold a mere promise to do something. It will not uphold an executory agreement. The father may promise to deed the place to the child at some future time, but he cannot be compelled to keep the promise.

A Valuable Consideration is either

1. A benefit to the person making the promise, or,
2. A loss or inconvenience to the person to whom the promise is made.

The Benefit may be anything of value given or promised to be given to, or done or promised to be done, for, the person who makes the promise. I may make a bare promise to give you a horse. I am not bound to keep it, for there is no consideration. But if I promise to give you a horse if you will cure one of my other horses, I am bound by my part of the contract, when you perform yours. You may not do the work yourself. You may hire a veterinarian. If I am benefited it is a consideration for the bargain.

The Loss or Inconvenience may be anything which costs you time, trouble or money. Curing my horse is a loss to you, if nothing more than of the time it takes you. "Time is money." The cure may be effected in an hour, while the other horse I promised you may be a valuable one. I cannot shirk my bargain for that reason. It makes no difference how small the benefit I receive, or how insignificant the loss you sustain, as compared with the thing I promise you. So long as I receive the benefit I calculated upon, or so long as you sustain any loss whatever of time, trouble or money, there is a valuable consideration for the contract and I must keep it.

"The slightest consideration is sufficient for the greatest undertaking," is a legal maxim.

Observation on Sufficient Considerations.—There are many instances of sufficient considerations which do not arise in every day business affairs. They are not discussed here, but the student should know that there are such. Some of them are: The prevention of litigation by compromise; forbearance of legal proceedings; offering a reward; trust and confidence imposed; mutual promises; assignment of chose in action; subscriptions for religious or charitable purposes. They are discussed in Kent, Vol. II, marginal page 463. The student who desires more information on them can find them there.

Invalid Considerations.—The fact that you are morally bound to carry out an agreement—that there is a moral consideration or obligation,—does not create a legal obligation. The law does not assume to enforce every promise which a man of nice honor or strict integrity would feel bound to perform. If you voluntarily promise, in good faith, to pay debts which your brother has already contracted, you are not legally bound to keep the promise except it be in writing. There is no consideration. But you are under a moral obligation to carry out your promise. Nor are you bound by a promise which has an illegal or impossible consideration.

Failure of Consideration.—Where the consideration totally fails and what is supposed to be a sufficient consideration, proves to be a nullity and of no value, the contract may be avoided. At the time of the great blizzard of 1886, an Eastern

capitalist had a cattle ranch in Western Kansas. He sold his five thousand head of cattle. The cattle had already perished in the blizzard, but it was not known in New York. There was a total failure of consideration and the purchasers were entitled to have their money refunded. There is a failure of consideration in all cases of purchase and sale when — unknown to the parties—the thing sold is dead or destroyed at the time of the sale. There is a failure of consideration, also, when the title to the things sold, fails. For illustration, no man can give or get good title to an article which has been stolen from the rightful owner, for the title totally fails, and with it the consideration.

THE SUBJECT MATTER.

Observation.—You have learned, (1) who must be the parties to a contract, (2) about their assent, and (3) the consideration. You have learned, also, that the parties must be such as can lawfully contract, that their assent must be fully and freely given, and fairly obtained, and that there must be either a good or a valuable consideration. One thing more and you have the four elements or necessary conditions of a contract. The fourth element is the *subject-matter*.

The Definition.—It is the thing to be done or omitted. A short definition, but it tells the whole story.

What it May Be.—It may be anything lawful. It cannot be anything unlawful. It goes without saying that a man cannot lawfully agree to do anything unlawful. If he agrees to do anything which the law prohibits, or agrees not to do anything which the law says he must do, the subject matter of the agreement is unlawful. The contract is illegal and void.

Why Illegal.—Because courts are created for the purpose of administering law and justice. Their business is to uphold private and public morality. They will not enforce an agreement which is destructive of public or private morals, or which is contrary to public policy or fraudulent.

Instances of Illegal Subject Matter.—Most of the instances in which a subject matter is illegal, belong to one of the following three classes. These three classes—three reasons

why the subject matter is illegal and their subdivisions—are as follows:

1. Against public policy.
   1. In restraint of marriage.
   2. In restraint of trade.
   3. Perversive of justice and government.
2. Immoral.
   1. Immoral life or publications.
   2. Sunday desecration.
   3. Bets or wagers.
3. Fraudulent.
   1. Fraudulent upon either party.
   2. Fraudulent upon third parties.

In Restraint of Marriage.—The law makes marriage an easy contract to enter into and a hard one to break. It does so because it favors marriage, and because it encourages marriage, it discourages everything in restraint of marriage. It says that no contract which wholly restrains one from marrying, shall be valid. A contract may partially restrain one from marrying and not be illegal, but the partial restraint must be reasonable. Your father's will may give you a legacy, provided you do not marry, say, until you are twenty-five. By that time you ought to be able to choose well and avoid a mesalliance. It would be a reasonable restraint and the will would be valid. But if it left you the legacy provided you never married, it would be void as to that provision. On the other hand, a man can leave a legacy to his wife on condition that she remain his widow. The law seems to be satisfied if a person marries once.

In Restraint of Trade.—All kinds of lawful trade conduce to the public welfare. Just as the law favors marriage as a social institution, so it favors the establishment of diversified industrial interests. Contracts which wholly restrain the carrying on of a lawful trade, injure the public welfare. They are against public policy, and therefore the law says they are void. But just as marriage may be limited or partially restrained, so it is about restraining a trade. The partial restraint must be reasonable. It is for a court of justice to say, in view of the particular facts, what is a reasonable restraint.

Suppose you wanted to buy out a coal business, and wanted to fix it so that the seller could not go on supplying the same

customers, after you had paid him the consideration. Now you may bind him in the contract never to sell coal in the same town or city; never to sell coal anywhere for five years; never to sell coal to the same customers. He may agree to one of these conditions or to all of them. The restraint would be legal. But if you bind him never to sell coal anywhere, at any time, to any persons, it is a complete restraint upon his engaging in his trade again, and the contract is void. He may commence delivering coal to the same customers, the next day, and you cannot stop him.

"Corners," "trusts," and "strikes" to control trade or labor are unlawful because in restraint of trade. They may be only in partial restraint, but the courts usually say they are unreasonable. If not reasonable they are unlawful.

Perversive of Justice and Government. — Courts and governments are instituted, primarily, for the administration of justice and the promotion of the welfare of society. The law, therefore, without stultifying itself, could not countenance contracts which had for their object the perversion of the administration of justice and government. Any bargain or agreement which has for its direct or indirect object the "packing" or "bribing" of a jury, the bribing of a judge, or in any other way interfering with the due course of litigation, is illegal. For the same reason, a contract is illegal which seeks to influence the acts or deliberations of a legislative body. An agreement made with a lobbyist, having for its end the improper influencing of legislation, is illegal.

Contracts Illegal for Immorality.— To this class belong agreements for the performance of any immoral act. Agreements which tend to further the leading of immoral life; agreements for the distribution or publication of obscene books or pictures; agreements made on Sunday, since they are regarded as a desecration of the Lord's Day. In some of the States, however, the statutes against worldly labor or business on the Sabbath, prohibit only the open transaction of business.

By the common law, wagers on a prize fight or a dog fight, and others of that nature, which have an immoral and demoralizing tendency are illegal. In many of the States, statutes have

been enacted extending the illegality to betting and gambling of all kinds, so that by these statutes, all contracts for the payment of money or the delivery of property, which hinge upon any chance or uncertain event, are void. If money has been paid into the hands of a stakeholder or to the winner, it can be recovered by the person paying it.

Stock and Grain Gambling.—This is a business commonly conducted by a class of persons called stock or grain "brokers." As ordinarily conducted, it consists in the selling of "options;" also called "puts" and "calls." An "option" is a contract in which one person, who is called the customer, agrees to purchase of the other party to the contract, who is usually the broker, a certain number of bushels of grain or shares of stock, to be delivered at a future day. The mere fact that the property is purchased to be delivered at a future day does not make the contract illegal, provided the parties really intend that it shall be delivered and paid for. If it is the intention that the grain or stock shall not be actually delivered and paid for, but that when the time arrives at which it was to be delivered, one of the parties is to pay the other the difference in the price of the stock, as it stands that day, compared with the day when the sale was made, the arrangement is a gambling contract, and void. It is simply a wager or bet on the rise or fall in the price of the particular kind of grain or stock agreed upon. The contract is void by common law, even though there is no statute in the State where it is made, against gaming and betting.

Contracts Illegal for Fraud. — The general rule is that fraud renders absolutely void all contracts into which it enters. It follows that where both parties to a contract are guilty of fraud, neither of them can derive any benefit from it, and neither can enforce it against the other. If only one of the parties is guilty of fraud, it is enforcible or voidable at the option of the innocent party. If he chooses to rescind it, however, he must do so within a reasonable time after discovering the fraud practiced upon him, and he must also return whatever benefit he may have derived from the contract.

A contract may also be void because its object is to defraud

a third person. It is then said to be fraudulent upon third parties. For instance, if an auctioneer, or the owner of property about to be put up at auction, secretly arranges with another person to stand by during the progress of the auction and bid on the articles put up without the intention of buying them, a fraud is committed on the honest bidders. Upon learning of it they can refuse to accept articles struck off to them, or can return articles which they have accepted and demand the price paid. Contracts perversive of the insolvent laws are illegal. Fraudulent assignments and fraudulent sales come within the same class, and in short, whenever two or more parties agree among themselves to do any act which will deceive or defraud a third person, the agreement is illegal and void.

STATUTE OF FRAUDS.

Its Nature.—It is a Statute which has been enacted by the Legislatures of nearly all the American States. It is patterned after an old English Statute, enacted by Parliament in the reign of Charles II., which was called "The Statute of Frauds and Perjuries." The object of the Statute of Frauds is to prevent frauds, which it does by compelling men to reduce some kinds of contracts to writing. It is not very easy to commit fraud where a contract has been put in writing. If a contract is not put in writing the contracting parties must rely upon the memory for the terms of the contract. There is then a temptation to commit fraud or perjury.

What it Requires.—Its chief requirement is that the various kinds of contracts which it specifies, shall be in writing.

The Contracts which it Requires to be in Writing.—It requires that the following classes of contracts shall be in writing and signed by the contracting parties:

1. Leases of land for more than one year.
2. Every contract for the sale of lands or any interest in lands.
3. Every agreement that by its terms is not to be performed within one year from the making of it.
4. Every special promise to answer for the debt, default or miscarriage of another person.

5. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

6. Contracts for the sale of personal property involving more than fifty dollars, unless,

(1) Some part of the property shall be delivered, or
(2) Some part of the purchase price be paid, or
(3) The sale be by auction.

What is Sufficient Writing.—It is not necessary to have a technically prepared legal document. The Statute says that the agreement or contract, "or some note or memorandum thereof," must be in writing and signed by the party to be charged therewith. Hence, a note or memorandum is sufficient. An ordinary business letter is sufficient, provided it expresses the understanding of the parties.

Leases and Contracts for the Sale of Land.—These are the first and second classes of contracts which must be in writing. It is absolutely necessary that agreements relating to real estate should be in writing.

Agreements Not to be Performed within One Year.—This refers to an agreement which by its terms is not to be performed within one year from the making of it. If you engage to take a situation after you have finished your studies, and it is agreed that you are to have a year in which to finish them, then the contract is not to be performed within a year from the time it is made, and it is voidable. There is nothing illegal about it, but you cannot compel the other party to accept your services, and he cannot compel you to work for him, unless the agreement is put in writing.

Promises to Answer for the Debt of Another.—It frequently happens that a creditor who has a claim against one who is not financially responsible, tries to collect it from another person, perhaps a relative, who is financially responsible. This gives rise to great hardships. To prevent this wrong the Statute enacts that a promise to pay the debt of another must be in writing. If your friend owes some one, and you accommodatingly tell the creditor you will pay it, while you are morally bound to do so, you are not legally bound, unless you make the promise in writing. If you agree to become respon-

sible for goods supplied to your friend before the sale has been made, your oral promise is sufficient. The debt has not been contracted. After the sale has been made, then the debt is contracted, and your promise to pay it must be in writing.

Promises in Consideration of Marriage.—This does not refer to engagements or "mutual promises to marry." Such promises are excepted by the Statute. It refers to such agreements as are sometimes made regarding the disposition of property in contemplation of marriage. Marriage settlements come under this class. They are promises by one of the parties about to wed to give the other certain property in consideration of the marriage. All such promises are void unless in writing and signed.

Contracts for the Sale of Personal Property.—This provision will be referred to under the title, "Sales of Personal Property." As the Statute of Frauds is enacted in some States, it necessitates a written contract only where the property involved is valued at more than thirty dollars.

SOME HINTS ABOUT MAKING CONTRACTS.

(1) **Make your Meaning Plain,** especially if you are making a contract in writing, for the courts will presume that the writing expresses all the terms of the agreement. You will not be allowed to say that there was any understanding different from the plain language of the writing.

(2) **Have your Intentions Expressed.**—It is not very material whether the language is grammatical or whether the contract is written after the proper legal form. It is material, however, that the intention of the parties be clearly expressed. If it were always done many a law suit would be saved.

(3) **Avoid Doubtful Terms and Technical Words.**—If there is a doubt as to the intention of the parties it will be presumed that the words are used according to their *usual* meaning, although the parties may have intended that the words should have a *different* meaning.

Remember, (1) That a contract which is lawful in the place where it is made is lawful everywhere; (2) That a contract which is void and illegal in the place where it is made is

void and illegal everywhere; (3) That if a contract is to be performed in a place other than where made, it must also stand the test of the laws of the place where it is to be performed.

PAYMENT AND TENDER.

Payment in Money.—A debtor must pay his creditor in that form of money known as legal tender, if the creditor requires it. It is called legal tender, because it may be legally tendered in payment of debts. It is such money as Congress may from time to time declare to be a legal tender for the payment of debts. Congress alone has power to say what kind of money shall be legal tender. It can limit the amount to which any particular kind of money shall be legal tender. Thus you cannot oblige your creditor to take more than ten dollars in silver coin of less than one dollar, nor more than twenty-five cents in pennies or nickels. Congress could make the National bank bills legal tender but it has never done so. Most creditors are glad to get them, and do not object because they are not legal tender. The common forms of legal tender for unlimited amounts, are gold, silver (dollars), and United States treasury notes.

Payment in Property.—A debt may be paid in property when that form of payment has been expressly agreed upon. If nothing is said about the form of payment it must always be in money. If you agree to pay in property you must deliver it at the time and in the manner agreed upon, or your creditor will not be bound to take it. He can demand money instead.

Payment by Note.—Giving a note for a debt is not paying it. But the parties may agree that it shall act as a payment, and the debt itself will then be paid. The note takes the place of the debt. Very frequently a debtor gives his creditor the note of a third party. Neither is this a payment of the debt unless it is so agreed. But if you hold John Doe's note and "turn it over," that is give it for a bill of goods, and it is accepted in payment, the seller must collect of John Doe. If the note proves to be worthless, it is not your loss, unless you indorsed it.

Manner of Making Payments.—In every case it is the

duty of the debtor to seek the creditor and pay him, unless the parties have agreed upon a place of payment. The creditor is not bound to go to the debtor and ask for payment. If a debt is not paid when due the creditor can immediately commence suit. If there is any one duly authorized to represent the creditor, the debtor may pay to such a person and avoid hunting up the creditor. Payment to an attorney is sufficient where the debt is in litigation. If the creditor directs that the money be sent by mail or by any other conveyance, and the instructions are carefully followed, the debt will be discharged, although the money may never reach its destination.

Presumption of Payment. — There are cases where the debtor, in case of litigation, need not prove that he has paid the debt. The burden of proof is on the creditor to show that it has not been paid. Among such cases are: (1) possession by the debtor of his written agreement to pay; (2) possession of an order or draft by the person upon whom it is drawn; (3) possession of a receipt by the debtor; (4) lapse of time; (5) certain subsequent dealings between the parties.

(1 & 2) Possession of Agreement or Draft. — If you are sued for the amount of a promissory note, and upon the trial you produce the note in your possession, it is quite reasonable to presume that you have paid it. If you have given a draft or order requiring the payment of money, and the person upon whom the draft or order is drawn, produces it, its possession is presumption of payment. In such cases it would be presumed that the debt is paid.

(3) Possession of Receipt.—A receipt for money or property furnishes a strong presumption that the money has been paid, or the property delivered. But possession of a receipt may be explained so that it will lose its force. For instance, a shipper by railroad is usually obliged to sign a receipt for the goods before they have been delivered to him. He will be allowed to show that after he had received them and examined them they were not in good condition or were missing in part. An employee of a large corporation may be obliged to sign the pay roll before he receives his money. His signature does not bind him. He may show that he did not get the whole of his pay.

Observation.—A systematic business man always takes a receipt or voucher in some shape for every payment of money, and preserves them in a systematic manner for future reference.

(4 & 5) Lapse of Time and Subsequent Dealings.—Where no demand is made for the payment of a debt, and no suit commenced to recover it for twenty years or upwards, it is reasonable to presume that the debt has been paid. Such is the law in most of the States. It should be so, because after such a lapse of time it would be difficult for the debtor, owing to the death of witnesses, or otherwise, to prove the payment. And likewise where two persons have a running account between them, and one gives to the other his promissory note for the balance, the transaction is presumptive evidence of a full settlement of their accounts up to the time the note was given.

Application of Payments.—A debtor may owe his creditor distinct debts arising upon distinct transactions. If the debtor makes a payment, and there is no express agreement as to the debt upon which it shall be applied, that payment is applied as follows:

(1) Where all the debts are due when the payment is made, the creditor may apply it to any debt he pleases. Of course if the creditor received the payment with a direction from the debtor as to its application, the creditor is bound to apply it as directed.

(2) If the debtor gives no express direction, but the circumstances are sufficient to show his intention, the creditor is bound to follow such intention. For instance, if the debtor should pay a sum exactly equal to one of the debts, the circumstance would be sufficient to show his intention of paying that debt.

(3) If neither party applies the payment, the law will make such an application according to the presumed intention of the parties and the justice of the case. Ordinarily the payment will be applied to the oldest debt. But a legal debt will be paid in preference to one that is illegal, and interest will be paid in preference to principal.

Tender of Payment.—It is an offer to pay the amount of a debt. It is usually resorted to by the debtor when there is a

dispute as to the amount. If the debtor concedes that there is a certain amount due, and desires to escape liability for interest or costs, if sued, he tenders such an amount. He is not liable for interest or costs thereafter, provided he tenders enough. There are certain formalities connected with a tender which must be strictly followed.

(1) The debtor must produce the money and offer it to the creditor. It is not enough to have it in the pocket or to say, "I am ready to pay you."

(2) Enough money must be offered to pay the debt, otherwise the tender is useless. If the creditor should recover in a suit more than was offered, he will recover interest and costs also.

(3) The identical money which was tendered must be put aside and kept intact. It must be ready for the creditor at any time he may call for it. It is his money, and not the money of the man who tenders it. If a suit is commenced the identical money must be taken into court.

(4) The offer of the money must be absolute. No condition can be attached to its delivery. Not even a receipt can be demanded, except that if it is in payment of negotiable paper, the paper can be demanded.

(5) The tender must be made to the creditor in person unless there is some one duly authorized to represent him. A tender to one member of a firm is sufficient, as is also a tender to one of several joint creditors.

(6) The tender must be made in that form of money which has the quality of legal tender, unless the creditor waives that requirement.

(7) If the debtor is not sure as to the amount of the debt, it is frequently the case in practice for him to lay down a sum in excess. If the creditor takes more than is actually due him, he is liable for the excess taken.

Tender of Property.—One party to a contract may perform his duty by making a tender of property. He may offer to deliver securities, or he may offer to deliver property which he has agreed to manufacture, or he may offer to perform services. The formalities are less strict than in case of a tender of money.

An honest offer of performance is usually sufficient. The tender of property is frequently necessary in order to create performance.

OUTLAWED-DEBTS.

The Reason for Them.—It is the policy of the law to enforce those rules which will dispense with litigation and promote justice. We have already seen that after the lapse of time there is a presumption that claims have been paid. To enforce this presumption and prevent the revival and litigation of old and stale claims, there is a statute which says that a claim or debt will outlaw unless it is sued within a fixed time. This statute has been enacted in nearly all the States in the Union. It is called:

The Statute of Limitations.—It limits the time to sue. It does not make a claim or debt void. There is always a moral obligation to pay an outlawed debt, although the creditor cannot sue for it. The statute is similar in nearly all the States, with the exception that the time in which a suit must be brought, differs slightly. In most cases demands arising out of simple contracts not under seal, such as promissory notes, book accounts, and the like, are outlawed after six years. Moreover, the statute is not limited to demands upon contracts but extends to damages for wrongs, such as injuries to person or property. The statute usually provides that demands of the latter nature shall outlaw sooner than contract demands.

How the Time is Computed.—It is important to ascertain when the period of six years commences. In general it may be said to commence at the time the debt is due, or from the time a suit might have been begun. In the case of a promissory note it would be at the time the note matures. Where there is a running account between parties, it begins at the date of the last item in the account. As between a merchant and a customer, where the merchant has been furnishing goods for a number of years, and the customer making payments, the balance remaining due from the customer will be outlawed within six years after the last time goods were furnished, or the last time a payment was made.

Disability of the Creditor.—It may happen that the debt

may belong to one who is under some legal disability, as an infant, a lunatic, or an habitual drunkard. The six years will commence when the infant becomes of age, or the lunatic or drunkard recovers. If the creditor is imprisoned or absent from the country, it will begin when he is released or returns. The disability, whatever it is, must actually exist at the time the debt becomes due, or the right to sue arises.

Absence of the Debtor.—If the debtor is absent from the country when the debt becomes due, of course the creditor could not sue him, and therefore would not have his full six years within which to collect the debt. The time does not begin, therefore, until the debtor returns within the jurisdiction of the courts of the State where the cause of action arises. Absence from that State is usually sufficient to keep the time from running.

New Promise and Part Payment. — After the debt has outlawed it may be revived by a new promise to pay. In some of the States the new promise must be in writing and signed by the debtor. In many States a mere verbal promise is sufficient. An acknowledgment of the debt is not sufficient. There must be a promise to pay it. Likewise, after a debt has outlawed, if the debtor pays any part of the principal or interest, the whole debt is revived. The period of six years commences again from the time of the payment. The payment may be made by delivering personal property, or it may be made by giving a note. If the note is for less than the amount of the debt, the whole debt will not be revived unless there is a distinct understanding that the note is a part payment. The payment must be made by the debtor or by his authority. Where there are several debtors jointly responsible, it is the rule in some States, that a payment by one will not revive the debt as to the others.

Set-off and Recoupment.—Set-off is called, in some States, a counter-claim. It arises where parties to a lawsuit have mutual claims. The defendant is allowed to set-off his claim against that of the plaintiff. If the defendant's claim proves to be greater than the plaintiff's, the defendant may procure judgment against the plaintiff for the excess. Recoupment is a diminution of damages sought to be recovered in an action.

A man who is sued for the purchase price of goods which were warranted merchantable, may claim that the goods were not merchantable, and therefore there was a breach of warranty. He recoupes his damages. His damages amount to the difference between the value of the goods, had they proved to be as warranted, and their value as actually delivered to him. Unlike a case of set-off, he cannot show that his damages are greater than the purchase price.

ACTIONS, DEFENSES AND DAMAGES.

A Cause of Action.—For every wrong the law is supposed to have a remedy. When one party to a contract breaks it, the other party has a right to sue. He has a cause of action. If he sues because his opponent has broken a contract, it is an action for breach of contract. If a man fails to pay his note at maturity, or fails to pay his grocer or tailor bill, or fails to do whatever he has agreed to do, there is a breach of contract, and the other party has a cause of action for a breach of contract. Likewise when a man does what is forbidden, and thereby injures another, the injured person has a remedy. He has a cause of action for the wrong done him. It is called an *action in tort*. The word tort is from the Latin *tortus*, meaning twisted or crooked, and it means a wrong or injury because it is crooked, and contrary to that which is right and straight. Every action not founded upon a contract, is an action in tort.

A Defense.—But the man who is sued, called the defendant, may have some rights on his side. He may claim that the man who sues, called the plaintiff, is not entitled to relief. These rights, whatever they are, constitute his defense. For instance, he may claim that he has performed the contract on his part and the plaintiff has not. He may claim that he has made payment, or that there has been a balance struck and a settlement made, or that the matter was left out to arbitration, or that he made a tender, or that the matter is outlawed. He may also *admit* the facts claimed by the plaintiff, and set forth demands in his favor against the plaintiff, called counterclaims. If his demands are valid, they will be set off against the plaintiff's demands.

Damages for Breach of Contract.—A man who has broken his contract is liable to pay damages to the other contracting party. Damages is the compensation which the injured party receives. It is such a sum of money as will reasonably and fairly compensate the injured party. If the breach of contract is simply a failure to pay money when due, the damages amounts to the sum agreed to be paid, with interest from the time it was due. If the action is for a breach of a contract to sell or purchase goods, the damages consists of the difference between the purchase price and the market value of the same kind of goods at the time they were agreed to be delivered.

Specific Performance of Contract.—Sometimes the courts compel a man to perform his contract specifically, if the other party desires that, rather than damages. If one man agrees to sell land to another, and afterwards backs out or fails to keep his agreement, the purchaser can either ask for damages or ask the court to compel the seller to make a deed.

Liquidated or Exemplary Damages.—When the parties to a contract agree that in case either fails to perform it he shall pay the other a certain sum, that is called liquidated damages. The injured party can usually recover in an action no more than the sum which was agreed upon; and again there are some cases where a man who has been guilty of some wrong doing is bound to pay more than the actual damages suffered by his opponent. This additional sum is called smart money, or exemplary damages. It is not allowed for a simple breach of contract, but only in cases where there has been some willful or malicious wrong done.

QUESTIONS.

Page 5.—What is the necessity for commercial law? How came it to be established in this country? Where did it originate? What is statute law? What is its purpose? What is its effect upon the common law?

Page 6.—What is a contract? In what three forms are contracts made?

Page 7.—What is the difference between oral and parol contracts? What is an oral contract? What is a written contract? What is a contract by specialty? Distinguish between express and implied contracts? Distinguish between executed and executory contracts? What are the four elements of a contract?

Page 8.—What is meant by an incompetent person? What parties are incompetent by reason of (a) legal disability? (b) natural disability? What are the necessaries for which an infant can contract?

Page 9.—When does an infant ratify a contract? When must he repudiate a contract? Under what circumstances is he liable for wrong doing and fraud? Was a married woman competent to make contracts by the common law? Has the common law rule in this regard been changed, and how?

Page 10.—What is the purpose of the rule that alien enemies are not competent to make contracts? Distinguish between the contract of an idiot and the contract of a lunatic? What contracts made by idiots, lunatics and drunken persons are valid?

Page 11.—To what extent is drunkenness a defense against punishment for wrong doing? What is the name applied to persons appointed to care for the persons and property of incompetents? What is mutual assent? Under what circumstances will mutual assent be binding on the part of the parties to a contract? How do minds meet?

Page 12.—How may a proposition be made and accepted? Under what circumstances may a proposition be withdrawn? What is duress? Is legal imprisonment duress? What effect does fraud have upon an agreement? If fraud has been practiced by one of the contracting parties, what may he do?

Page 13.—What is fraud? What is ignorance of fact? What is ignorance of law? What is the consideration of a contract? What is the result if there is no consideration?

Page 14.—What is a sufficient consideration? What is a good consideration? When is a good consideration sufficient to uphold a contract? When is it insufficient to uphold a contract? What is a valuable consideration? What may the benefit be?

Page 15 —What is an invalid consideration? What is a failure of consideration? How does a failure of consideration affect a contract?

Page 16.—What is "subject matter?" What may it be? What may it not be? State the three instances in which the subject-matter of a contract is illegal.

Page 17.—To what extent may a contract restrain marriage and yet be legal? When is a contract illegal because in restraint of trade? To what extent may a contract lawfully restrain trade?

Page 18.—What contracts are illegal because of immorality? What wagers are illegal by the common law?

Page 19.—What contracts are illegal by reason of the statutes against betting and gambling? If both parties to a contract are guilty of fraud, what follows? If one party only is guilty what is the result? What is said about contracts designed to defraud third persons?

Page 20.—What is the object of the statute of frauds? How does an oral contract facilitate fraud? What class of contracts must be in writing and signed by all parties?

Page 21.—What is a sufficient writing? In case of a sale how is the debt contracted so that the promise to answer for it must be in writing?

Page 22.—What promises in consideration of marriage must be in writing?

Page 23.—In what form of money must debts be paid? What constitutes legal tender? Under what circumstances may the giving of a note act as a payment? What is the duty of a creditor regarding payment?

Page 24.—In what cases is payment presumed?

Page 25.—If there are distinct debts owing a creditor at the time of a payment, how may he apply it? What is a tender of payment?

Page 26.—What is the result if the debtor makes a valid tender of payment? What are the formalities connected with a tender of payment? What may the debtor do if he is not certain as to the amount? What is said with reference to the tender of property?

Page 27.—What is the policy of the law regarding outlawed debts? What is said regarding the Statute of Limitations? How is the time computed? How does the disability of the creditor affect it?

Page 28.—Does the absence of the debtor affect it? What effect will a new promise have upon an outlawed debt? How must the new promise be made? What effect will part payment or the giving of a note have? What is the rule where there are several debtors? When do set-offs or counter-claims arise?

Page 29.—What is a cause of action? When does a party to a contract have a cause of action? What is a breach of contract? What is an action in tort? What is a defense to an action?

Page 30.—What is the compensation called which is allowed to the injured party? How is it computed? What are the damages allowed for breach of a contract to sell or purchase goods? What is specific performance? Distinguish between liquidated and exemplary damages.

NEGOTIABLE PAPER.

Its Origin.—Negotiable paper is said to have had its origin, like many of the world's conveniences for the transaction of mercantile business, with the Jew. Moreover, it is the offspring of persecution. Early in the fourteenth century the Jews were banished from country to country. Negotiable paper formed a convenient means for carrying their property with them. They were largely engaged also in trading on the Mediterranean coasts, and bills of exchange were resorted to for transferring property from one place or country to another. It has become a part of the commercial currency of the world. It facilitates the great operations of commerce. It increases the circulation and enlarges the nominal capital in trade.

The Test of Negotiability.—Negotiability depends upon the presence in the writing of negotiable words.

Negotiable Words.—They are the words which render a bill of exchange, promissory note or check, negotiable. They impart the negotiable quality. The usual words are "order" or "bearer." Without these words the instrument will not possess the quality of negotiability. It may be assigned by one person to another, but the assignment of it transfers only the rights possessed by the person transferring it. If the person to whom it is originally given could not collect its face value, then no other person into whose hands it may come can do so. If an instrument has all the attributes of negotiability, however, any person into whose hands it may come, in good faith, for a valuable consideration, before it is due, can enforce it to its fullest extent against every former owner as well as against the maker.

The Result of Negotiability.—If the negotiable words are present, the writing, or instrument as it is usually called, passes from hand to hand by the simple act of indorsement and delivery. It is given and received as a representative of value,

whether a bill of exchange, a promissory note or a bank check. It is freely assignable from man to man, and its possession, for value, gives its owner a right of action.

Payable Absolutely.—A negotiable instrument must consist of an obligation to pay absolutely a specified or ascertainable sum of money. There must be no uncertainty as to the amount to be paid, and no contingency about its payment. The terms of payment must be absolute as to (1) amount, and (2) time. It cannot be made payable in property or in the currency of any particular State or country. It cannot be payable in labor or services. If it is to be paid in any other way than by the transfer of money, or if any condition or agreement makes the time or amount uncertain, it is not negotiable.

The Amount of the Negotiable Instrument.—The amount should be written in the body of the instrument. It should be written distinctly, fully and correctly. A mere mistake in spelling a word, however, will not make it worthless. It is usual to insert the amount both in figures and in words, the figures in the upper or lower left-hand corner and the words in the body of the instrument. Such is the custom, but it is not a necessity. If there is a variance between the figures and the written words, the written words will control, unless it be proved that they are wrong. If a draft, note or check having the figures filled in, be properly signed and delivered, leaving the space for the written amount blank, the holder may write in the proper amount.

The Date of the Negotiable Instrument.—This means both its date and its time of payment. Negotiable paper ought to be dated, but a date is not essential to its validity. If the place where it is made and the date are wanting the holder may prove them. It may be dated earlier or later than the day it is actually made without affecting its validity. When the date is used it is a material part of the instrument. Time is counted from the date. It is quite essential that a check be dated, for while it might be good as between the payee and the maker without being dated, yet the bank cannot safely pay it, and will ordinarily refuse to pay it.

The Time of Payment.—We have seen that it must be defi-

nitely fixed. If its payment is contingent upon the happening of some event or the performance of some act, it is not negotiable. The exact day of payment need not, however, be stated, or even known. It is sufficient, if the time is sure to come, although just when, is uncertain. It may be made payable at or within, a certain and fixed number of days after the death of a certain person. It is negotiable, because, while it is uncertain as to when its maturity will arrive, yet the death is sure to happen, and the time of payment is sure to come. It may be payable at sight or so many days after sight. It may be made payable on demand. The owner may then fix the time of payment by presenting it and demanding payment.

Other Necessary Conditions.—It goes without saying that a negotiable instrument must be in writing. That is, it must be either in writing, or partly in print and partly in writing. It must be properly signed by the maker. It is not essential that the name be written in full, and a person may make his mark in any chosen form so long as it is his intent to make it his signature. When it is executed by one member of a firm or by an agent it should be so drawn or signed as to show that it is the paper of the firm or the principal. The payee must be stated with certainty unless it is made payable to bearer. If there is no designation of a payee, it is not negotiable.

Non-Essential Parts.—It is customary for negotiable paper to have stated a place of payment. This is not essential. If the place of payment is stated, then the paper must be presented there for payment and demand made. The drawer of a bill or the indorser of a bill or note cannot be charged unless the paper is presented at the place of payment at the proper time. The words "for value received" are usually inserted in bills and notes. The omission to insert them does not affect the validity of the instrument. Their presence is an admission that the maker has received value from the payee. When they are used in a bill of exchange they may mean that the drawer has received value from the payee or that the drawee has value in his hands from the drawer.

Non-Negotiable Notes and Drafts.—An instrument may be perfectly good and valid as between the maker and the payee,

although not negotiable. It may not contain the negotiable words, but that is no reason why the maker should not pay it. The maker sometimes purposely refrains from inserting the negotiable words if he prefers to have the payee hold it, for their absence renders its transfer difficult.

The Assignment of Non-Negotiable Paper.—We have seen that there may be non-negotiable notes and drafts. For convenience they may be called non-negotiable paper; because they do not contain the negotiable words, or for some other reason they cannot be passed from hand to hand by simple indorsement and delivery, therefore they are not negotiable. But it does not follow that they cannot be assigned. They are assignable by one holder to another just as any other form of contract. They are subject to sale, but unlike negotiable paper the purchaser takes them subject to all rights and equities existing in favor of the maker. The purchaser can only protect himself by first inquiring of the maker or otherwise satisfying himself that there are no existing offsets or counterclaims to the paper.

THE PARTIES TO NEGOTIABLE PAPER.

The Maker.—This term is applied to the person who attaches his signature to the face of a promissory note. There may be a number of makers. A note may be made for the benefit of only one of them, and the others may be acting as sureties for the one who receives the benefit and proceeds of the note. They are all makers in the eye of the law, and in case of the non-payment of the note at maturity, it need not be protested as against any of them. No maker is entitled to notice of protest and non-payment. A person who signs his name as a maker but performs the act simply for the benefit of another maker, may protect himself by writing the word "surety" after his name. As a surety he is not liable until due process of law fails to collect the amount of the other parties.

The Payee.—The payee is the person to whom a promissory note is made payable, or the person in whose favor the bill of exchange is drawn.

The Indorser.—An indorser is a person who writes his name

on the back of negotiable paper. The signature may be placed on the back of a bill of exchange, on the back of a promissory note, or on the back of a check or draft, and in either case the writer is an indorser. The signature may be placed there for the accommodation of the maker, or for the previous endorser, or the person placing it there may himself receive the benefit of it. In either case he is entitled to notice of protest and non-payment in case the paper is not paid at maturity.

The Holder.—A holder of negotiable paper is any person into whose hands the paper may come for value. He is the person legally in possession of it either by indorsement or delivery, or both. If it is a note he is entitled to receive payment from the maker. If it is a bill of exchange he is entitled to receive payment from the drawer or acceptor. He must have paid some consideration for it. He must have become possessed of it before its maturity, or otherwise his right to payment is subject to any offsets or counterclaims existing in favor of the maker.

The Drawer and Drawee.—A drawer is a person who makes a bill of exchange, and a drawee is the person to whom it is addressed, and who is requested to pay the amount of money therein mentioned. When the bill is presented to the drawee for payment, if he accepts it he then becomes the *acceptor*. By acceptance is meant the assent which he gives either expressly or by implication to the terms of the bill. It is a declaration of his willingness to pay the amount which he is requested to pay. The usual manner of acceptance is for the drawee to write the word "accepted" across the face of the bill, followed by the date and his signature. At common law a verbal acceptance is sufficient, but in some of the States statutes have been enacted to the effect that an acceptance must be in writing.

PROMISSORY NOTES.

Definition.—A note is simply a written promise to pay money at a specified future time. The promise is made by the person signing it, called the maker. The promise is to pay the money to the person named in the writing, called the payee, or

to his order, or to bearer. It is called a promissory note because it is a "promise to pay," and those words occur in it. In ordinary business transactions it is called simply a note. It is the most ordinary form of negotiable paper, although bills of exchange were probably first used in commercial transactions.

The Form of a Note.—No precise form or wording is necessary providing the essential requirements or conditions are observed. We have already seen what these are. An ordinary form is this:

PROMISSORY NOTE.

800\frac{00}{100}$. *Geneva, N. Y., June 1, 1891.*

Ten days after date, I promise to pay to the order of W. B. Wilson, Eight Hundred Dollars, at the First National Bank, Geneva, N. Y. Value received, with use.

Robert D. Brown.

This note is payable "to the order of" the payee, Wilson. It might read, "I promise to pay to W. B. Wilson, or bearer." It might also be payable "to bearer" or "to my own order." If any of these forms are used the note is negotiable. If it should read simply "I promise to pay to W. B. Wilson," the words "bearer" or "order" being wholly omitted, it would be a non-negotiable note. Being non-negotiable, Wilson might sell it, but the purchaser would take it subject to all the rights which existed in favor of Brown, the maker. For instance, if Brown gives the note to Wilson in payment for "Bohemian oats" or for a worthless patent right, or in any other transaction in which he is swindled, then he has a claim against Wilson for damages. If the negotiable words are not in the note it is non-negotiable, and Brown may offset his claim for damages against any one into whose hands the note may come. If the negotiable words are present and the payee, Wilson, sells the note, before it is due, to a third person who buys it in good faith and is ignorant of the swindle or fraud practiced upon Brown, then Brown must pay it in full.

"With Use."—It will be observed that these words are in the form given. They mean that the note draws interest. Sometimes the words "with interest" are used. If the payee or holder intends to procure the note to be discounted at a bank, words denoting that the note draws interest are frequently omitted. The interest which will accrue on it, is computed, and the owner receives the balance. The interest deducted is the discount charged by the bank and forms its profit by the transaction. A note does not draw interest, unless the words "with interest" or, "with use" form a part of the writing.

The Maturity of Notes.—The day when a note is payable is its day of maturity. It is said to fall due or mature that day. In the form given, the maker, Brown, promises absolutely to pay the amount ten days after date, and the date is June 1st. The note is not due, and Brown is not bound to pay it, until June 14th, because the maker has three days after the specified day of payment within which to pay it. They are the three *days of grace* which, by immemorial custom, are allowed the makers of notes and bills in all cases where they are drawn payable at a specified time. The note in question might read "June 11th after date" or, "ten days after demand," but in either case the time of payment is specified and the maker has three days of grace. He has the whole of the third day. The maker Brown, as we have seen, has until June 14th within which to pay his note. He cannot be sued for it until the 15th, or the day following the last day of grace. A note payable on demand has no days of grace.

Presentment for Payment is the demand of payment at maturity. If a note is not drawn payable at any particular place, the maker is bound to look up the holder and pay it. If the place of payment is stated in the body of the note, the holder would be obliged to present it then, or otherwise demand payment, before he could sue the maker. A failure to present the note at maturity, or demand payment, does not release the maker. It is his duty to have sufficient funds at the place to satisfy the note. If he does that, he will be discharged from the liability to pay interest and costs accruing thereafter. Presentment of notes, and demand for payment,

is strictly necessary in order to hold an indorser liable. Under the discussion of Bills of Exchange, which follows, the rules of presentment are given.

BILLS OF EXCHANGE.

Their Origin and Use.—They originated with the early traders along the Mediterranean coasts. They were used then as now, to facilitate trade. By their use debtors residing at a distance from creditors are enabled to cancel debts, without an actual shipment of the money. The drawing of a bill of exchange or draft, is always in effect, a transaction between debtor and creditor. It is a request by the creditor to the debtor, to pay a third person, the sum of money specified.

Foreign and Inland Bills.—If the request is made to a person residing in a different State or country, the term foreign bill of exchange is applied to it. If the parties are residents of the same State or country, it is an inland or domestic bill and is commonly called a draft. The term, foreign draft, is frequently applied to a foreign bill.

The Form of a Bill.—The necessary requirements, which we have seen pertain to all kinds of commercial paper, must be present in the bill. Otherwise no particular form of words need be used. An ordinary form is as follows:

INLAND BILL OF EXCHANGE OR DRAFT.

$1,000$\frac{00}{100}$. *Pasadena, Cal., June 1, 1891.*

At sixty days' sight pay to J. J. Kempe, or order, One Thousand Dollars, value received, and charge to my account. *Geo. P. Davis.*

To Sam. D. Lee,
Savannah, Ga.

Technically this would be a foreign bill, as it is drawn by a resident of one State upon a resident of another State, but that term is now commonly applied only to bills in which the drawer

and drawee are residents of different countries, and the usual form for such a bill is as follows:

FOREIGN BILL OF EXCHANGE.

1. Exchange for
£10,000. *New York, June 1, 1891.*

Sixty days after sight of this first of exchange (second and third unpaid), pay to the order of R. B. Evans & Co., Ten Thousand Pounds Sterling, value received, and charge to my account.

W. H. Goodman.

To Howard Case,
Liverpool, Eng.

Foreign bills of exchange are drawn in sets of three, as shown by the words "second and third unpaid" in the above form. They may be forwarded by different routes, and the one first arriving be paid, or the second and third may be retained, until it is known whether the first miscarries.

The Maturity of a Bill.—The bills given in the foregoing forms are payable sixty days after sight. The drawees, Lee and Case, have sixty days after seeing them, or after presentment, within which to pay. If the bills were to read "at sight," instead of "at sixty days sight," or "sixty days after sight," they would be payable immediately on presentment. They would then be "sight drafts." They might also be drawn payable on demand, or a certain number of days after date.

Days of grace are allowed for the payment of bills in the same cases as with notes, unless the statute law of the place where payable, enacts to the contrary. Many States have enacted statutes to the effect that bills drawn "at sight" shall have no days of grace, and also as to bills drawn upon a bank. A bill drawn payable "on demand" is like a note so drawn, in that it has no days of grace.

Presentment for Acceptance.—It is the duty of the payee or holder of a bill to present it for acceptance, (1) to the right person, (2) at the right time and place, (3) in a proper manner.

(1) It ought to be presented to the drawee in person or his duly authorized agent. If it is drawn upon two persons who are not partners it should be presented to both of them. If they are partners presentation to one is sufficient. It should be presented by the rightful owner or his agent.

(2) If a bill is drawn payable "at sight," or a specified number of days "after sight," or "after demand," it must be presented within a reasonable time. What is a reasonable time depends upon the particular circumstance of each case. If the bill has to go a long distance, or the holder is delayed by flood or a railroad wreck, the time would be greater than if the drawee was easy of access and no particular circumstance prevented the presentment. A bill drawn payable a certain number of days after date or on a specified day need not be presented prior to the time. An early presentment is best, however, for the drawee may accept it and thus become liable for it, although he may not intend to pay it until maturity. The presentment should be made during business hours, or at least between morning and bedtime. If addressed to any particular building or street number, it should be presented there, otherwise at the residence of the drawee. If he has moved to another place, in the same State, diligent search should be made for him. If he has left the State, presentment at his last place of residence is sufficient.

(3) The drawee should have a reasonable opportunity to examine the bill. He is also entitled to an opportunity to examine the state of his accounts with the drawer. If necessary for this purpose, and he demands it, the bill should be left with him for twenty-four hours. In some States, it is made a crime by statute if he destroys the bill or fails to return it.

Acceptance.—When the draft shown in the first form is presented to the drawee, Lee, if he is willing to pay it, he signifies such willingness either orally or in writing. In commercial language he "accepts" it. He is therefore liable to the holder upon his "acceptance." According to the usual course of business, he would signify such willingness by writing the word "accepted" across the face and adding his signature and the date. By the common law he could orally promise to

pay it and, his acceptance was just as valid. It is best to have the acceptance in writing for greater certainty, and in many States it is provided by statute that an acceptance must be in writing, in order to be valid, and the holder may require acceptance in writing.

Conditional Acceptance.—The acceptance may be conditional or absolute. The bill itself, however, must be an absolute direction to pay without contingency or condition. If the drawee accepts it, to be paid when there are funds of the drawer in his hands, it is a conditional acceptance—conditional upon the existence of the necessary funds. The holder is not bound to receive a conditional acceptance. If he receives it, he must abide by its terms. By receiving it, he discharges the drawer from further liability.

Absolute Acceptance.—If the drawee accepts a bill, unconditionally, he becomes the *acceptor*, and is bound to pay the bill according to its terms. Thereafter he is the principal debtor. The drawer and indorser are looked upon as his sureties. It is just as though he made his promissory note for the amount.

Non-Acceptance is the refusal of the drawee to accept a bill. He is not bound to accept it even though he has funds in his hands with which to meet it, nor is he bound to accept it until maturity. If he declines to accept it, whether presented to him at or before maturity, there are certain steps which the holder must immediately take. He must give the drawer and indorsers due notice that the bill is "dishonored" —that the drawee refuses to accept it. It is not enough to notify the indorsers, as in case of a promissory note, but the drawer is also entitled to notice. He is not entitled to notice if he knew at the time he drew the bill, that he had no funds in the hands of the drawee, and that there would be no funds with which to pay it. It would be easy for him to say, however, that he supposed that he had the funds and therefore the safe course is to notify him, in all cases, if it is desired to hold him liable.

Protest and Notice.—If a foreign bill is dishonored, it should be protested by a notary public, and notice of protest

sent to the parties, together with the notice that it was dishonored. An inland bill need not be protested. It is sufficient if the drawer and indorsers are given notice of its dishonor. The notice need not be in writing, and no particular form of words is required, so long as it conveys to them the information that acceptance of the bill has been refused.

If not given orally or delivered personally, the notice may be deposited in the post office at the place where the bill was payable, directed to the post office address of the parties for whom it is intended.

When a protest and notice of protest is required, as in case of the non-acceptance of a foreign bill, more formality is required. Protest is a formal declaration in writing by a notary public, that he duly demanded payment and that payment was refused. The protest must identify the bill by including a copy of it or otherwise referring to it. Suppose the draft given in the first form, was dishonored, the notary would mail to the maker, Davis, at Pasadena, a notice similar to this ·

NOTICE OF PROTEST.

Savannah, Ga., Aug. 3, 1891.

Sir:

Take notice, that a bill drawn by you, upon Samuel D. Lee, for $1000, dated June 1st, 1891, payable sixty days after sight, at Savannah, Ga., was this day protested for non-payment, and that the holders look to you for payment thereof, payment having been demanded and refused.

Yours respectfully,

J. B. BOSTWICK,
Notary Public.

To Geo. P. Davis:

It is desirable that you notify your prior indorser, if any.

Where to Send the Notice.—If there were an indorser to be charged, the words "and indorsed by you," would be inserted after the place of payment, and a copy of the notice would be mailed also to the indorser. Sometimes a drawer

or indorser may add to his signature, his residence or place of business. The notice must be directed accordingly, unless he has moved. If the residence or place of business is not known, it is the holder's duty to make careful and diligent inquiry to ascertain it. If he does so and acts upon the information he receives, even though misled, he performs his duty. Some States have enacted statutes regulating the giving of the notice and these should be consulted.

When to Send the Notice.—Due diligence is required. Unless a statute prescribes the time within which the notice must be given, it is sufficient if the holder uses reasonable diligence, considering all the circumstances. As in case of presentment, he may have to make inquiries concerning the residence of the person to be served with notice. The prevalence of malignant disease; the stoppage of the ordinary channels of communication by fire, flood, or inevitable accident; the sudden death of the holder or of his agent—all such things will be taken into account if the question is whether he has used due diligence. Under ordinary circumstances, the notice should be mailed, or delivered on the next business day following the day of refusal of payment. Notice of non-payment need not be given to indorsers of non-negotiable paper, unless required by statute. It is frequently customary for drawers and indorsers to waive protest and notice of non-payment by written waiver on the back of the paper. This is done by writing the signature after these words: "For value received I hereby waive demand, protest and notice of non-payment."

CHECKS.

Checks are Bills of Exchange, drawn on a bank or banker. They never specify a time of payment. They are, therefore, payable immediately, and days of grace are not allowed. A drawer who has no funds to his credit in the bank, sometimes dates his checks ahead. A post dated check has no validity until the day of its date arrives, and before that time the drawer expects to have funds on deposit to meet it. An ordinary form of a check is this:

CHECK.

No. 352. *Rochester, N. Y., June 1, 1891.*

MERCHANTS BANK OF ROCHESTER.

Pay to Stewart Terry, or order, Five Hundred Dollars, $\$500_{100}^{00}$.

Howard Jerome.

The Negotiable Words.—The above check might be drawn "to the order of Stewart Terry," or it might be drawn "to Stewart Terry or bearer." In either case it would be negotiable. If it is payable to Terry's order, the bank has no right to pay it to any one else, unless it bears his indorsement. Hence, if it is lost or stolen and his signature is forged, and the amount is paid by the bank to the forger, the bank is the loser. Neither Terry nor Jerome suffer by the forgery. But if a check is drawn payable to bearer, the bank can safely pay it to any person presenting it, although he may not be the rightful owner.

Liability of the Parties.—The drawer of a check is liable to pay it if the bank does not, providing it has been duly presented for payment. The bank is bound to pay it, if the drawer has funds applicable. No one but the drawer, however, can enforce this obligation resting on the bank. In some States, statutes have been enacted making it a crime for a person to draw and deliver a check, knowing that he has no funds at the bank with which to pay it. This would not apply to a post dated check and the statutes are frequently evaded by post dating. In the absence of a statute it is a fraud to draw a check knowing there are no funds to meet it.

Presentation.—It is the duty of the holder of a check to present it for payment, within a reasonable time. The rules given for the presentation of a bill of exchange for acceptance, which have been discussed in the previous pages, apply substantially to the presentation of checks for payment. Failure to present a check within a reasonable time may discharge the

indorsers and drawer. The bank may have funds of the drawer to pay a check if it is seasonably presented. But suppose it is held for an unreasonable length of time, and before it is presented the bank fails; the loss will not fall upon the drawer, for he had funds on deposit to meet it when it was given, and he had every reason to suppose that the holder would perform his duty by presenting it. When payment of a check is refused notice of demand and non-payment must be given the drawer and indorsers, as in the case of bills.

Certification of Checks.—It was said in the paragraph next to the last that no one but the drawer could enforce the bank's obligation to pay a check if there were funds to meet it. The holder has no rights as against the bank until the bank has accepted the check. A check is accepted by certifying it. Certification is to a check what acceptance is to a bill. The cashier, teller, or other proper officer writes the word "good" or "certified" across the face of the check, together with the date and his signature. By that act the bank itself becomes responsible for the amount. It makes an agreement with the holder and with any one to whom he may transfer the check, that the drawer has the necessary funds on deposit, and that it will retain in its hands a sufficient amount to pay the check whenever presented. Thereafter the holder can retain the check as long as he pleases, before presenting it. He runs no risk, excepting that of the bank's insolvency.

Hints About the Use of Checks.—Present them for payment or have them certified as soon as possible after receiving them.

Draw them "to the order of" unless there is some good reason for drawing them payable "to bearer." For, if they are payable to the order of the payee, they must bear his indorsement before being paid, and they thus become a voucher or receipt for the payment of the debt.

If an error is discovered after a check has been delivered, or, if for any other reason its recall is desired, "stop payment," by directing the bank not to pay it. This can be done at any time before the bank has paid or accepted it.

THE TRANSFER OF NEGOTIABLE PAPER.

By Assignment.—We have seen that non-negotiable paper may be passed from hand to hand by assignment. The owner of such paper may make an assignment of it to another and that other, or the assignee as he would be called, may collect it. But negotiable paper also, may be transferred by assignment, without indorsement. The result of a transfer in this way, is to cause it to be subject to any defenses the maker or drawer may have. It would thus lose its chief virtue as negotiable paper. If the payee of the note given as a form wished to assign it, he could annex to the note a writing like this: "For value received, I hereby transfer and assign the annexed note to John Jones. W. B. Wilson."

Dated July 1, 1891.

By Simple Delivery.—A bill or note payable to a person named in it, or to bearer, may be transferred by a mere delivery of it. No writing, by way of assignment or indorsement is needed. But if it is payable to a person named in it or his order, he must indorse it to render it negotiable.

By Indorsement "Without Recourse."—This is resorted to when the holder of paper wishes to transfer it without incurring the liability of an indorser, and at the same time preserve its negotiable character. He indorses it, that is writes his name on the back, and above his signature he writes the words "without recourse." His connection with the paper ends on delivery of it. It is immaterial to him whether it is paid or dishonored.

By Indorsement.—This is the usual and ordinary method of transferring title to negotiable paper. The previous methods are not employed except there be some special reason for their use. By this method is meant that manner of transferring paper whereby the person transferring it assumes a liability to pay it. If he is the first person to indorse it, then he is liable to pay it if the maker does not. If others have indorsed it before him, he is liable to pay it if such other persons, who are called his prior indorsers, or the maker do not pay it.

Who May Transfer Paper.—Only the person having title to it can transfer it. It may be the payee, or it may be an

indorser or assignee—that is some one to whom it has been transferred by the payee. The executor or administrator of a deceased holder of paper, has title sufficient to transfer it. An executor or administrator, however, should indorse the paper "without recourse" in order to escape personal liability.

THE INDORSEMENT OF NEGOTIABLE PAPER.

What is Indorsement.—In its simplest sense, it is the act of the holder, writing his signature on the back. He "backs" it. The term is also used to indicate the signature itself, as well as the contract which the indorser makes by placing it there.

With Whom the Contract is Made.—It is made with every one who may afterwards own the paper. The indorser assumes a liability which can be enforced by any future holder.

The Liability Assumed.—It is a liability to pay it, provided it is not paid at maturity. This is called the contract of indorsement, and it is what the indorser agrees to do by "backing" the paper. The person who indorses a note agrees that if the maker or prior indorsers do not pay it, he will. The indorser of a bill of exchange agrees, in addition, that, if the drawee refuses to accept it, he will pay it.

Conditions of the Liability.—The above is the naked agreement of the indorser. He agrees to it, however, upon certain conditions. Certain steps have to be taken by the final holder of the paper in order to fasten the liability upon the indorser. The conditions are (1) that the paper will be presented for payment or acceptance at the proper time and place; (2) that, if it is dishonored, the indorser shall receive due notice; (3) in a necessary case, that the paper shall be duly protested for non-payment.

The Time and Place of Presentation.—Under the discussion of promissory notes and bills of exchange, the rules relating to presentation for acceptance and payment have been stated in detail, and also the rules relating to protest and notice of non-acceptance and non-payment. The same rules apply substantially to the presentation of all kinds of negotiable paper for payment, in order to charge an indorser. Payment must be demanded when due, at the proper place of

payment, and the indorser must have due notice that payment was refused. If these conditions are not performed, the indorser is released from liability. The indorser's liability is regulated by statute, and in one or two States no demand of payment or notice is necessary. In most of the States the rules given above apply.

Forms of Indorsement.—Besides the indorsement "without recourse" which has been mentioned, there are other forms of indorsement. If Wilson, who is named as payee in the form of a promissory note on page 38, wishes to transfer the note by indorsement, he may simply write his name on the back without other words. That would be an indorsement in blank. If he wishes he may write "Pay to the order of John Jones, W. B. Wilson." That would be an indorsement in full. If he writes before his signature, "Pay to John Jones only," it is a restrictive indorsement, as payment can only be enforced by Jones, and henceforth the note is not negotiable. If he wishes to give power to collect the note without transferring title to it, he would write, "Pay to John Jones for collection" before his signature. In case of indorsement in blank, if Jones became the next holder, he may if he chooses write the words, "Pay to the order of John Jones" above the signature of Wilson. In that case the note cannot be safely paid until Jones has indorsed it.

A BONA FIDE HOLDER.

Application of the Term.—It is applied most frequently to the holder of a promissory note, who has become possessed of it after it has been made and delivered. It may, however, be applied to one holding any form of negotiable paper under the same conditions. The bona fide holder is not one of the original parties to the paper. He knows nothing about the circumstances attending its making and delivery. If the maker has any particular offsets or counterclaims against the payee, the bona fide holder knows nothing about them. If he does, then he is not a bona fide holder.

Conditions of Bona Fide Holding.—To constitute a person a bona fide holder, the paper must be negotiable on its

face and must be transferred to him (1) in good faith, (2) before maturity, (3) for value. In other words the bona fide holder of a note must have bought it before maturity, for a valuable consideration, supposing it to be valid negotiable paper, and having no knowledge or suspicion that the maker has any defense to it.

The Result of a Bona Fide Holding.—The bona fide holder of negotiable paper can collect it although the party from whom he takes it had no title to it or for any other reason could not enforce it. This is one of the chief characteristics of negotiability. In buying any other kind of personal property it is the duty of the purchaser to beware—to examine its nature and to see how the seller came by it. But if a man offers to sell you a promissory note which appears to be proper on its face, and there is nothing in the seller's actions to excite your suspicions, you are not bound to hunt up the maker and ask him how he came to give the note. If his signature was procured by fraud, that fact will not relieve him from paying it.

"Bohemian Oats."—The importance of the rule of bona fide holding makes it worth an illustration. The illustration selected is typical of a large class of transactions in which men are induced to give their promissory notes by deceit and fraudulent representations. There are cases in the books where men who have been sued upon notes which they have made, have tried to defend the suits upon such grounds as these: That the notes were given for the purchase price of what was represented to them as a new and marvelously productive kind of oats; that they were told they need not pay the notes if everything was not satisfactory; that, if the oats were delivered at all, they were a very ordinary kind of oats; that they supposed they were simply putting their signatures to a trial order for some of the oats though in fact the order proves to be a complete promissory note. Of course, the maker feels that he ought not to pay a note given under such circumstances. If it remained in the hands of the person to whom he gave it, he would not be obliged to pay it. But it always turns up in the hands of a man who claims to be a bona fide holder. He claims he bought it in good faith, before maturity, in the usual course

of business. Nine times out of ten the maker has to pay it. The alleged bona fide holder may be a confederate of the payee and just as guilty, but the business is so conducted that the maker cannot prove the conspiracy.

Lost and Stolen Paper may even be good in the hands of a bona fide holder. The rightful owner of paper which has been lost or stolen, must give immediate notice of the loss, to all the parties. He should publish the notice as widely as possible. This applies to all paper drawn payable to bearer or to order and indorsed in blank. If the paper requires the owner's indorsement to render it negotiable, and he has not indorsed it prior to its being lost or stolen he cannot suffer any loss, even though his indorsement is so cleverly forged as to escape detection. According to statute in most of the States the lawful owner of lost or stolen paper may collect it, even though he cannot produce and surrender it. He is usually obliged, however to execute a bond to save the maker from loss if the paper should afterward prove to be in the hands of another.

Forged Paper.—From what is said in the last paragraph and previously, it is readily seen that forged paper has no validity even in the hands of a bona fide holder. Whoever purchases it or pays it suffers the loss.

Accommodation Paper.—Referring to the form of a promissory note on page 38, if Brown, the maker, has consented to lend his credit to the payee, Wilson, and makes the note without any consideration, so that Wilson may sell the note and procure the proceeds by the accommodation, it is accommodation paper, and Wilson is an accommodation holder. He has no right to use the paper for any other purpose or in any other way than as agreed upon with the maker. This obligation, however, is only enforceable as between the maker and one who is not a bona fide holder. If the paper passes into the hands of a bona fide holder, he can collect it although it has been "diverted" from its intended use. When one person indorses paper for the accommodation of another, in order to give it credit, he is said to be an accommodation indorser.

Guaranty of Paper.—Guaranty of paper differs from indorsement in that the person who guarantees paper, called the

guarantor, is not a party to the paper. The indorser is always a party to the paper. Moreover, the indorser's contract is negotiable, that is, his liability passes from hand to hand with the note. The contract of the guarantor may be assigned, but is not negotiable. The guaranty of paper is written on the back in words like these: "For value received I hereby guarantee the payment of the within note." Under that form, if the paper is not paid when due the guarantor may be sued immediately with the maker. If the guarantee is of "the collection," instead of the payment, the guarantor cannot be sued until judgment has been rendered against the maker, and the legal process fails to collect the judgment.

QUESTIONS.

Page 33.—State the origin and use of negotiable paper. What are the negotiable words? What is the result if they are inserted? What is the result of negotiability?

Page 34.—What is said in regard to uncertainty as to the amount of the paper? How is it customary to state the amount? What is the necessity of negotiable paper being dated? To what extent may the time of payment be fixed?

Page 35.—What are some of the non-essential parts of negotiable paper? How is non-negotiable paper transferred? What other necessary conditions are mentioned?

Page 36.—Who is the maker of a note? Who is the payee of negotiable paper? What effect will the word "surety" have, after the maker's name?

Page 37.—Who is called a holder of negotiable paper? Distinguish between the drawer and the drawee in a bill of exchange. What is a promissory note?

Page 38.—What is said regarding the form of words of a note? What other words might be used in the form given?

Page 39.—When does a note draw interest? What is meant by the maturity of a note? What are days of grace? What must the holder of a note do regarding demand of payment? What is the result of a failure to demand payment?

Page 40.—Distinguish between foreign and inland bills of exchange. What are the necessary requirements of a bill?

Page 41.—When does a bill of exchange mature? What is the rule regarding the allowance of days of grace for bills of exchange? What is the duty of the holder of a bill regarding presentment for acceptance?

Page 42.—What is the acceptance of a bill and how is it done? In what cases must a bill be presented within a reasonable time ?

Page 43.—Distinguish between conditional and absolute acceptance. What is non-acceptance ? What must be done in case of non-acceptance ? When is protest and notice of dishonor of a bill necessary?

Page 44.—How is notice given? In what form must the notice be ?

Page 45.—When should it be sent? What are checks? What is waiver of protest and notice ?

Page 46.—Who are the parties to a check and what is their respective liability? What is the duty of a holder of a check with regard to presentation ? How may a check be drawn payable ?

Page 47.—What is the certification of a check? What is the contract of certification ?

Page 48.—When may paper be transferred by assignment? When by simple delivery? What is the object of indorsement without recourse?

Page 49.—What is indorsement? What is the liability incurred? What is said regarding the time and place of presentation in order to charge the endorser?

Page 50.—What are the circumstances under which a person may be a bona fide holder? What other forms of indorsement are mentioned ?

Page 51.—What is the result of a bona fide holding ?

Page 52 —What is the rule regarding the validity of lost and stolen paper? Of forged paper? What is accommodation paper? What is the guaranty of a paper and how is it distinguished from indorsement ?

SALES OF PERSONAL PROPERTY.

Personal Property includes every article subject to ownership which may be detached by the owner and transferred by him from place to place. It is movable property, in contradistinction to real property, which is immovable.

A Sale is a transfer of the ownership for a price in money. It is not necessarily a transfer of the thing itself, although the delivery of possession usually follows a sale. The term sale is used in law only with reference to personal property. The word conveyance is most frequently applied to the transfer of real estate. Moreover, it is a transfer for money. If the purchase price is paid in property, the contract is one of barter or exchange.

The Requisites of the Contract are the same as in any other contract. For instance, there must be competent parties; the same mutual assent of the parties; there must be a consideration, which is called the price; there must be the subject matter, which is the thing sold. Moreover, we have seen that the statute of frauds, relates to sales of personal property, and therefore conformity to the statute, is another requisite in this class of contracts.

The Parties.—They are the buyer and the seller; the seller is frequently called the vendor and the buyer the vendee. They must be competent to make a contract, excepting, as we have seen, in cases where infants or lunatics may make a contract for necessaries. The seller must own the property which he seeks to sell. If he has no good title to it himself, no one who buys it can get a good title to it. We have seen that the one exception to this rule is in the sale of negotiable paper to a bona fide holder, where the buyer can get good title although the seller did not have it.

Mutual Assent and Price.—The principles of mutual assent, as stated under that head in the discussion of contracts,

apply in every respect to the contract of sale. The price is called the consideration in other kinds of contracts. It must be either money paid or promised to be paid. If the amount to be paid by the buyer is expressly agreed upon there is said to be an express price. If no price is fixed it is implied. The law will imply that the seller is to pay the reasonable market value for the article he purchases. He is bound to pay the reasonable market value although it may be greater than the price he could have agreed upon with the seller.

The Subject Matter of the Sale.—It is the thing sold. It must either actually exist or have a possible existence, sometimes called a potential existence. It may not in fact exist, but if there is a possibility of its coming into existence, it may be sold. We have seen under the discussion of failure of consideration (page 15), that if the thing intended to be sold has perished or been destroyed there would not be a valid contract, because of failure of consideration. The illustration given applies to a sale. It is not essential to the contract of sale that the thing sold should have a bodily existence and be capable of manual delivery. It is sufficient if it has an actual value, like the good will of a trade.

Dealings which Amount to a Sale.—Any words indicating a bargain, whereby the owner of the thing signifies his willingness to sell it, and the purchaser signifies his willingness to buy it for a price, will constitute a sale. If the subject matter has not an existence sufficient to make it possible of sale, as we have seen in the last paragraph, the bargain becomes an executory contract to sell. If the thing has perished, as in the illustration, and the seller is unable to carry out his contract the buyer can recover whatever damages he may have suffered.

Dealings which Do Not Amount to a Sale.—There is no sale in case of a mutual mistake as to the identity of the subject matter. If the seller has one thing in view which he supposes he is selling, and the buyer has in view an entirely different thing which he supposes he is buying, there is no sale of either. There is a form of transaction which is called a sale, in which the owner of the property delivers it to another, upon the understanding and agreement that the title is not to pass

until the purchase price has been fully paid. Under such circumstances there will be no valid sale until the price is paid as agreed upon, and thereupon the title will pass. This contract is frequently resorted to by dealers selling on the "installment plan."

When the Contract of Sale Must be in Writing.—We have seen that, by the statute of frauds, every contract for the sale of personal property for the price of $50 or more shall be void, unless

1.—A note or memorandum of such contract be made in writing and be subscribed by the parties to be charged thereby; or,

2.—Unless the buyer shall accept and receive part of the goods; or,

3.—Unless the buyer shall, at the time, pay some part of the purchase money.

There is a slight variation in the statutes of the various States as to the amount of the purchase which will cause the case to be affected by the statute. In most cases it is fifty dollars. In New Hampshire it is thirty-three dollars and thirty-three cents; in Maine, thirty dollars; and in Vermont, forty dollars.

What is a Sufficient Writing.—It may be a "note or memorandum"; it may be an ordinary business letter sent and answered; it may be a simple memorandum, like this:

SOUTHOLD, N. Y., June 1st, 1891.

Bought of Bradley S. Wiggins this day his span of black horses for $150.00.

SETH L. TUTHILL.
BRADLEY S. WIGGINS.

A Bill of Sale.—It is frequent in cases where the transaction involves the sale of valuable property, or if the purchaser desires some evidence of his title, for the seller to execute a bill of sale. No particular form of words is necessary. It is sufficient if it describes the property, states the price and contains proper words denoting a transfer. The following is an ordinary form:

BILL OF SALE.

Know all Men by These Presents: *That I, Joseph H. Gilmore, of Yonkers, N. Y., of the first part, for and in consideration of the sum of $1200.00, lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by Henry F. Burton of the same place, of the second part, a receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto said party of the second part, his executors, administrators and assigns, the manuscripts of two lectures, one being a lecture entitled: "Browning and his Cotemporaries," and the other entitled: "The Literary Life of Hawthorne."*

To have and to hold the same unto the said party of the second part, his executors, administrators and assigns forever. And I do covenant and agree to and with the said party of the second part, that I am the owner and have the right to transfer said property, and will defend the same against any person or persons whomsoever.

In witness whereof, I have hereunto set my hand and seal the first day of June, 1891.

J. H. GILMORE. (Seal)

It is not necessary for a bill of sale to be acknowledged, but if it is desired in order to make it more authentic, an acknowledgment may be added like this:

ACKNOWLEDGMENT.

STATE OF NEW YORK. }
COUNTY OF WESTCHESTER. } *ss.*

On this first day of June, 1891, before me, the subscriber, personally appeared Joseph H. Gilmore, to me personally known to be the same person described in and who executed the within instrument, and acknowledged that he executed the same.

JAMES M. HUNT,
Notary Public.

Signatures to the Memorandum.—The memorandum must be signed in order to make it binding. In the case of the sale of the horse by Wiggins to Tuthill, there would not be a sale, binding on both parties, unless both signed the memorandum.

If Wiggins signed it, Tuthill could compel Wiggins to deliver the horses and accept the money. On the other hand, if Tuthill did not sign it, Wiggins could not compel him to receive the horses and pay the money.

Property Included Within the Statute.—As originally enacted in England, the statute referred only to sales of "goods, wares and merchandise." In New York, and in many other States, the language used includes, "things in action," referring to promissory notes, bonds, stocks and mortgages. A statute in this form would include nearly every species of personal property.

Sales on Trial.—This is a form of sale in which the property is delivered to the buyer upon his promise to return it, if not satisfactory. If it is to be returned within an agreed time it is the duty of the buyer to so return it. If no time is fixed it must be returned within a reasonable time. By keeping the property after the time agreed upon the buyer may become liable to retain it and pay for it. If it is taken for the purpose of testing or proving it, the buyer is bound to give it a fair and honest trial. He is not liable for any damage resulting to it, provided he uses proper care and discretion in trying it.

Sales of Goods to Arrive.—This is a sale of merchandise expected to arrive by vessel from abroad. If the goods do not arrive as expected there is no sale unless it is the intention of the parties that the title shall pass to the buyer, and that he shall thenceforth take the chances of arrival. If the seller has the bill of lading he may transfer that to the buyer, and thenceforth his liability ceases.

Sales by Sample.—This has come to be a very common manner of making sales. It is the method employed in all cases where sales are made by traveling salesmen; the buyer selects from the line of samples carried by the "drummer" such goods as he desires. Upon such sales it is not necessary for the buyer to have it expressly agreed that the goods to be delivered shall correspond to the samples. That fact is always implied. Whenever goods are sold by sample the seller warrants that they shall correspond in all respects to the samples exhibited. Upon the delivery of the goods the buyer is enti-

tled to an inspection of them before accepting them; if he finds they do not correspond to the samples he can refuse to receive them. It is his duty, however, to give the seller immediate notice, since, if he remains silent, he may be obliged to retain them.

Conditional and Executory Sales.—The forms of sale just discussed are conditional sales, in that there are certain conditions attached to the sale. In the sale upon trial the condition is that the article shall prove satisfactory. The sale on arrival is upon the condition that the goods arrive, and the sale by sample is conditional upon the goods corresponding to the sample. The term "conditional sale" is also applied to every sale in which one of the parties is to perform some act, or some event is to happen before the sale is completed. An executory sale, although called such, is not strictly a sale; it is merely an agreement to sell. A man may sell the wool which his sheep are expected to produce. It has a possible existence and, as we have seen, may be the subject of sale. A sale of a thing to be delivered at a future time is an executory sale; in short, the term may be applied to all forms of sale which are not completed. If the sale is completed, and the title has passed to the buyer and the property delivered, it is an executed sale and no longer executory.

Delivery of the Property.—The terms of the sale having been agreed upon it is the immediate duty of the seller to deliver the goods. The delivery here referred to is the actual transfer from the seller to the buyer. That is the common acceptation of the term. In a more strict and technical sense the word sometimes denotes the transfer of title. It is sufficient for our purpose to refer to it in the sense denoting the transfer of possession, or, as is sometimes called, delivery of possession.

The Time of Delivery.—If no time is fixed the seller is bound to deliver the thing sold within a reasonable time. What is a reasonable time will depend upon the circumstances of the case, such as the character and bulk of the articles sold, the distance they are to be carried, and the facilities for carrying them. If the time of delivery has been agreed upon it is

the duty of the seller to deliver the goods within such agreed time, otherwise the buyer may refuse to receive them. It is important to observe that the seller is not bound to carry the goods to the buyer at a distance unless that is the agreement. If the buyer is to take the goods from the place where they are at the time of the sale, the seller's duty is simply to place the goods at the buyer's disposal, so that the latter can come and get them whenever he chooses.

The Place of Delivery.—If the parties do not agree upon a place of delivery it is implied that the articles sold are to be delivered at the place where they are at the time of the sale.

Constructive Delivery.—This refers to the delivery of ponderous and bulky property which is incapable of being handled over. The delivery of the key to the premises where the property is located, or the delivery of the bill of lading, or the performance of any act on the part of the seller which indicates his intentions, amounts to a constructive delivery.

Delivery to Carrier.—Where the buyer and seller reside at distances from each other, it is customary for the seller to deliver the goods to a railroad company or other carrier, for transportation. The delivery of the goods to a carrier especially designated by the purchaser is equivalent to a delivery to the purchaser himself. If the purchaser does not designate the line of transportation to be used, it is the duty of the seller to deliver the property to the carrier engaged in transporting goods by the most feasible and direct route, and the route in ordinary use between the place of business of the buyer and that of the seller. If the seller agrees to carry the goods to the buyer, the risks of transportation rests upon the seller until they arrive at their destination, and the carrier has furnished the buyer a reasonable opportunity to receive them.

Fraudulent Delivery.—This refers to sale and delivery without change of possession. The goods still remain in the custody of the seller although the sale is complete, and the title is in the buyer. The transaction is valid between the buyer and seller, but if third persons are injured or damaged by reason of it the transaction is invalid as to them. It is invalid for the reason that the retention of possession by the

seller is considered a badge of fraud, and third persons who are misled by the fact that the property is still in the possession of the seller, and buy it, provided the seller sells it a second time, will have the better title to it. The second sale avoids the first.

Payment and Tender.—The various rules regarding payment and tender, as discussed under the head of contracts (page 23), are applicable to contracts of sale of personal property, and additional discussion is unnecessary.

Warranty, as applied to sales of personal property, is an agreement on the part of the seller that the property corresponds to his representations and description. The seller does not always warrant the thing sold, for he may expressly or by implication decline to warrant it. The warranty must be made prior to, or at the time of the sale. If made prior to the sale, it must be made during the negotiations which lead to the sale. A seller may describe his horse to an intending purchaser as sound and kind. If the conversation results in a sale, the seller has warranted his horse to be sound and kind. But if the conversation does not lead to a sale and the negotiations are broken off, the declaration would not be a warranty, although the parties afterward came together and a sale resulted. Representations made after the sale is completed—the money paid and the property delivered—will not, in any case amount to a warranty. In brief, representations not made at the time of the sale and forming no part of the negotiations leading to the sale, will not constitute a warranty.

What May Constitute a Warranty.—Any representations or assertions made by the seller, which purport to state facts about the thing sold, of which the buyer is ignorant, will constitute a warranty. If such statements or assertions are untrue, the seller is accountable. It is immaterial whether or not he is aware of their untruth.

Divisions of Warranty.—Warranty may be express or implied. An implied warranty may be either warranty of title or warranty of quality, and the tabular division is as follows:

Warranty.
- 1. Express.
- 2. Implied.
  - 1. Warranty of title.
  - 2. Warranty of quality.

Express Warranty is an express statement made by the seller at the time of the sale. He may not use the word "warranty." In speaking of a horse which he is selling he may say that it is sound and kind, and we have seen that he makes a warranty. It is as though he should say: "I warrant the horse to be sound and kind." The representations and statements, of course, must relate to matters of which the buyer is ignorant. If the horse has lost an ear, the warranty would not extend to that defect, as it is open and visible.

Implied Warranty of Quality.—This is a warranty which the law implies as to the merchantable quality of the thing sold. It is not implied when the buyer examines the articles and from their nature they are subject to complete inspection. When flour or sugar are sold by the barrel, there is an implied warranty that they are of merchantable quality and are reasonably fit for the purpose for which they are ordinarily used. In case of a sale by sample, or by description, there is always an implied warranty that the goods will correspond to the sample and description. If the buyer states the purpose for which he wants the goods and the seller remains silent, there is an implied warranty that they are fit for that purpose.

Implied Warranty of Title.—This is a warranty that the thing sold belongs to the seller, and that he has a right to dispose of it. The seller may not expressly assert that the thing is his in order to make a warranty. The law implies that, and he is accountable to the buyer if events prove that some one else has a better title. This kind of warranty arises only when the seller has the thing in his possession at the time of the sale. If it is not in his possession the buyer must be on his guard, and must require an express warranty.

"The Purchaser Must Beware," is a legal maxim. He cannot be blind and deaf, provided the circumstances of the sale afford him an opportunity of using his ears and eyes to discover manifest defects. If the thing is open to inspection, and he fails to inspect it, he has no redress against the seller for defects, unless fraud and deceit were used to mislead him, or an express warranty is made by the seller.

Stoppage Intransitu.—This is the right of the seller who

has shipped goods to the buyer, to stop delivery. He can exercise it only in case the goods are actually in transit, unpaid for, and the buyer is unable to pay. If he knows that the buyer is insolvent at the time of the sale, he cannot take advantage of his right to stop delivery, nor can he stop delivery after the goods have come into the possession or under the control of the buyer. If any part of the purchase price is unpaid, the right of stoppage exists, providing all other conditions exist.

The Exercise of the Right.—If the goods are in the hands of a carrier or transportation line, it is sufficient for the seller to inform the carrier that he claims the right to stop the goods and forbid their delivery. An ordinary business letter stating the facts is sufficient, and it might be worded something like this :

Orilla, Ont., June 1st, 1891.

To the Grand Trunk R. R. Co.,

Gentlemen :—I shipped by your line yesterday, consigned to Samuel Parsons, Rochester, N. Y., ten car loads of lumber. I have since received information casting doubts upon his solvency. I have the right of stoppage in transitu. Do not deliver the lumber, but hold it subject to my order.

Yours respectfully,
T. Depuy.

The Rescission of a Sale.—This is the avoidance of it by one of the parties, or, in case it has not been completed, the refusal to complete it. There are five principal grounds upon which either party may rescind. They are :

1. Mutual mistake.
2. Fraud.
3. Breach of warranty.
4. Failure of consideration.
5. Illegality.

In the discussion of contracts, in the previous pages, the grounds were stated upon which either party might avoid a contract. They were substantially those given above as the grounds upon which either party may rescind a sale. The discussion of them, which has been had, as applying to all forms of contracts, relates equally to contracts of sale. There is one

ground of rescission however, which relates solely to contracts of sale and not heretofore discussed. It is:

Breach of Warranty.—It applies in cases where the title has not passed to the buyer, and the sale was by sample or description. Upon examination if the buyer finds that the goods do not correspond to the sample or description he may refuse to accept them, and may recover the purchase price or any part of it which he has paid. In case a rescission is desired on the ground of breach of warranty, or for any other of the reasons given, the party desiring to rescind must immediately restore the thing sold or the purchase price, as the case may be. He must restore the thing sold in substantially the same condition as when he received it, and he must do so immediately upon discovering the mistake, fraud, breach of warranty, or failure of consideration.

QUESTIONS.

Page 55.—What is personal property? What is a sale of personal property? What are the requisites of the contract? Name the parties to a contract of sale.

Page 56.—What is the subject matter of a sale? What may it be? What dealings amount to a sale? What dealings do not amount to a sale?

Page 57.—When must a contract of sale be in writing? What is a sufficient writing? What is a bill of sale?

Page 58.—Who must sign the writing?

Page 59.—Define (1), sales on trial; (2), sales of goods to arrive; (3), sales by sample.

Page 60.—Define conditional and executory sales. What is delivery of the property? When should it be made?

Page 61.—What is the rule regarding the place of delivery? What is constructive delivery? What is the rule regarding delivery to a carrier? What is fraudulent delivery?

Page 62.—What is warranty? When must it be made? What words will constitute a warranty? Give the tabular division.

Page 63.—What is express warranty? What is implied warranty of quality? Of title? What is a purchaser bound to do regarding defects in property? What is stoppage in transitu?

Page 64.—When and how is it exercised? What is the rescission of a sale? What are the grounds of a rescission?

Page 65.—What is breach of warranty? What must the party do who desires to rescind a contract on the ground of breach of warranty?

AGENCY.

An Agent is any person employed by another to do any act for the employer's benefit or account. The business for which the agent is engaged is the agency. The agent may be any person of sufficient understanding to transact the business for which he is engaged. A minor though unable to make a contract in his own name, may act as agent for another. The employer is called the principal. The principal cannot be a person who is incompetent to make a contract. The principal cannot make a contract through an agent which he has not power to make himself.

Appointment of Agents.—An agent may be appointed or employed for the agency, orally, or by an ordinary business letter. If the business, however, which the agent is employed to transact, involves the execution of a contract under seal, or the execution of any documents which must be sealed, then the appointment must be in writing and under seal. The appointment is frequently made in writing also to enable the agent to exhibit the proof of his appointment and the extent of his authority. An appointment of this kind is called a power of attorney, and the ordinary form is as follows:

POWER OF ATTORNEY.

Know all Men by These Presents,

That I, Nathaniel E. Weeks, of the City and County of New York, State of New York, have made, constituted and appointed, and by these presents do make, constitute and appoint Vincent T. Bly of the same place, my true and lawful attorney for me and in my name, place and stead, to grant, bargain and sell all my real estate situate in said City of New York, and in my name to execute, acknowledge and deliver good and sufficient deeds of conveyance of the same, with or without covenants of warranty. Also to collect, demand and receive the several amounts as they

fall due upon the coupons connected with my railway stocks and bonds; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue thereof.

In Witness Whereof, *I have hereunto set my hand and seal the 1st day of June, in the year of our Lord, one thousand eight hundred and ninety one.*

Nathaniel E. Weeks (*Seal*).

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
City and County of New York. } *ss.*

BE IT KNOWN, *That on the first day of June, one thousand eight hundred and ninety one, before me personally appeared Nathaniel E. Weeks, above named,* { L. S. } *who was to me known to be the person described in and who executed the above Power of Attorney, and acknowledged that he executed the same.*

IN TESTIMONY WHEREOF, *I have hereunto subscribed my name, and affixed my seal the day and year first above written.*

James M. Hunt,
Notary Public.

When to be Acknowledged and Recorded.—If the agent is appointed to convey real estate, as in the form given, or to execute any papers which are to be recorded, then the power of attorney must be acknowledged, so as to entitle it to record under the same circumstances as the papers which the agent intends to execute.

Authority of the Agent.—An agent appointed under power of attorney has no authority except that specially conferred by the power. If his authority is to be limited, the power of attorney should be drawn accordingly. The power of attorney may be general in its form so as to confer upon the

agent power to do any and all acts in connection with the particular business, which the principal could do.

Proof of Authority.—If there is a written appointment, as by power of attorney or letter, that will prove the agent's powers. If there is no written appointment, then the agent's powers and authority will be governed by the circumstances and the conduct of the principal. If a principal allows an agent to publicly transact business in his name, and makes no objection, he will be bound by the agent's acts. But he is not liable unless he has notice of the conduct of the agent and ratifies it by remaining silent. The representations and declarations of an agent, or one assuming to be an agent, are never sufficient to bind the principal or one for whom an agent assumes to be acting. Only the conduct of the principal himself, will furnish a binding obligation.

General and Special Agents.—A general agent has authority to transact all business coming within the usual extent and scope of his employment. The agent employed to conduct a store has power to transact all the business connected with the operation of the branch of trade conducted, whether each particular act has been specified or not. On the other hand the special agent has only such authority as has been specifically conferred upon him. He can do only what he is especially and expressly told to do. Either a general or a special agent has such incidental powers as are connected with the business on hand. He may do that which is usual or customary as to the manner of transacting the particular or general business. If he is authorized to sell goods for instance, he may sell on credit, if that is the usual and customary manner of selling.

Notice to the Principal.—It is a rule that whatever notice is communicated to the agent, or whatever knowledge is possessed by the agent, is notice to the principal and the knowledge of the principal. The principal is chargeable with and is supposed to know, all that his agent does. If he fails to know it, it is his own neglect, for which he is chargeable. The rule in brief is: "Notice to the principal is notice to the agent."

Liability of the Principal.—The liability of the principal extends, of course, to any act or contract which the agent may

do or make within the scope of his authority. The principal himself may not be known in the transaction, but whenever his connection with it is discovered he can be held accountable. Moreover, the principal is liable for the wrongful acts of the agent. They must be such acts, however, as are performed by the agent in the transaction of the business in the ordinary and usual manner, and within the scope of the agent's employment. The conductor of a train is an agent. He is given general supervision over the train and the passengers. If he wrongfully expels a passenger while in the line of his duty and performing what he considers his duty, the railway company is liable.

Liability of the Agent.—We have just seen that the agent, acting lawfully and within the scope of his appointment and authority, always causes his principal to be responsible for his actions. The agent is not himself personally responsible unless, (1) he acts fraudulently or unlawfully, or, (2) unless he agreed to become personally liable at the time he accepted the appointment. If a conductor willfully and wrongfully strikes a passenger he is a wrong doer. If it is done while acting within the scope of his employment, he not only makes his principal, the railway company, liable, but he becomes personally liable for his wrongful act. If the agent commits a fraud without the knowledge of the principal he is personally liable. The principal however, must disaffirm the wrongful act or fraud of the agent as soon as it is known. By remaining silent or accepting the benefit of it he becomes liable, equally as though he expressly ratified it. The agent also becomes liable to third parties not only where he has agreed to assume the liability at the time of the appointment and where he has exceeded his authority, but also, where the principal is not known. If the principal is not known a person dealing with the agent enters into the contract upon the credit and the responsibility of the agent himself. If the principal's connections with the transaction is discovered, at any future time, he may be held accountable.

Reciprocal Rights of Principal and Agent.—The liabilities of the principal and agent which have just been men-

tioned refer to their accountability to third persons—to persons with whom the agent transacts business. As between themselves, the principal is bound to pay the agent the compensation agreed upon. If the compensation is not fixed upon by agreement, the agent is entitled to what would be a reasonable compensation under the circumstances. The agent on his part is bound to make proper accounting; to act in good faith towards his principal; and to transact his principal's business with ordinary skill and diligence. If he exceeds his authority or is guilty of positive misconduct and neglects or omits to perform his duty, he is liable to pay the principal the resulting loss or damage. For instance, if it is the duty of a cashier of a bank to present the notes held by the bank and demand payment and he neglects to make a demand, and thereby the indorser is discharged so that the bank loses the amount, the cashier must pay the loss. An important rule relating to the good faith of the agent is this: an agent cannot act for two principals, that is, he cannot act for two parties to a contract. If he attempts to do so, neither will be bound by the contract and neither will be obliged to pay him compensation. A real estate broker cannot act as agent for the seller and as agent for the purchaser at the same time. If he effects a sale it is voidable by either of them, and he cannot collect commissions from either.

Termination of the Agency.—It is the end of the agent's employment, and the end of his authority. At the time of the appointment or contract of employment, the parties may agree upon a period during which it is to continue, and the expiration of the period terminates the agency. If the employment is for the transaction of some particular business, the agency will terminate when the business is transacted. The agency may be terminated also by revocation on the part of the principal or by renunciation of the agent; that is, the principal may revoke the agent's authority at any time before it is executed, or the agent may renounce his authority by declining to act. Bankruptcy of either party will terminate the agency, as will also the insanity or death of either party.

QUESTIONS.

Page 66.—Who is an agent? What is an agency? Who may be principals and who agents? How are agents appointed? What is a power of attorney?

Page 67.—When must a power of attorney be sealed, acknowledged and recorded? How is an agent's authority limited and defined?

Page 68.—What is the proof of an agent's authority? When are the agent's declarations proof of his authority? Distinguish between general and special agents. What is notice to the principal? What is the liability of the principal?

Page 69.—What is the liability of an unknown principal? When is an agent personally liable? When may the principal become liable for the agent's wrongful act? What are the reciprocal rights between principal and agent?

Page 70.—What is the result if an agent attempts to act for two principals? How and when is the relation of principal and agent terminated?

PARTNERSHIP.

The Contract.—Partnership is a contract whereby two or more persons mutually agree to employ their money and labor in a common business and divide the profits and share the losses. They may contribute equal or unequal amounts of money. They may divide the profits and share the losses equally or unequally, according to the terms of their agreement. If they contribute equal amounts of money and equal labor and skill, it is customary to divide the profits and bear the losses equally. Their common business constitutes the partnership, sometimes designated a copartnership, and they are called a firm.

Formation of Partnerships by Written Contract.—If the business intended to be transacted is of some moment and involves the contribution of a considerable sum of money, it is customary to put the contract of partnership in writing to be signed and sealed. The written agreement is called the articles of copartnership.

Form of the Articles.—No particular form of words is necessary. A writing after the manner of an ordinary business letter is sufficient so long as it expresses the intentions of the parties. It may state

1. The names of the parties.
2. The business in which they are to engage.
3. The duration of the partnership.
4. The several amounts of money which the partners are to contribute.
5. The proportion of the profits and losses which each partner is to share and to bear.
6. The firm name.
7. The time which each partner is to devote to the business.
8. It may also define the duties and powers which each partner is to perform and have.

There are many and various items which an attorney would insert, if employed to draw articles of copartnership, which are not essential to the agreement. The main thing is to express the intentions of the parties, whatever they are. Let the student attempt a draft of articles of copartnership. If the first trial does not cover the ground, the second may.

Other Provisions.—The agreement may also provide for the various amounts which the partners may withdraw from the firm's cash, for his individual living expenses. It may provide for books of account. It may provide for the dissolution of the partnership, and for such other special agreements as the nature of the business may demand.

Formation by Oral Agreement is as valid as by written agreement. The written agreement is resorted to merely for greater certainty and to avoid future misunderstanding and dispute. The partners may come together before embarking in business, talk the matter over and come to a full understanding of what each is to do. They thereby form a valid partnership.

Formation Without Express Agreement.—Partnerships are sometimes formed without either articles of copartnership or oral agreement. This happens when two or more persons embark in any business or undertaking without having expressly formed a partnership in either of the ways previously mentioned. In such a case the law implies a partnership and fixes the rights, duties and liabilities of each partner. It is a partnership by implication. The law implies, among other things, that they are to bear the losses and divide the profits equally. If the amount of the profits and losses which each partner is to share and bear is not fixed by express agreement, it will be equal for each.

The Test of a Copartnership.—In case no articles of copartnership have been made and signed, or in case there has been no express agreement for a copartnership, it is frequently a question whether persons engaging in a joint enterprise, are copartners. The question is whether the acts of the parties result in a partnership by implication. If, in the conduct of the business, they have made a division of profits and mutually

borne the losses, they are partners beyond question. That is a test. It is not necessary that they should all contribute money. One may contribute the entire capital and the others contribute their skill and labor. Moreover, a division of the profits alone will not constitute them partners. An employee of a firm may receive a share of the profits as his compensation and yet not be a partner. If, besides sharing in the profits, he bears a proportion of the losses, he is a partner.

Dormant and Special Partners.—A *dormant* partner is one who contributes money to the partnership capital but is not publicly known as a partner. He is a concealed partner. If his connection with the firm becomes known his liability is the same as that of the other partners, who are called the *ostensible* partners. A special partner is one who contributes a particular sum to a partnership business upon the agreement that he is only to be liable for the partnership debts to the amount of his contribution, and to draw profits accordingly. The partnership thus formed as to the special partner is called a *limited partnership*. It is only possible in those States which have enacted a statute authorizing it. It is important to observe that, if a person holds himself out, or allows others to hold him out, to the world as a joint trader or copartner with such others, he will be liable as a partner, to those with whom the others have dealings.

Liability of the Partners.—As between themselves, the partners may agree upon the liability which each shall assume by entering the partnership. As to all other persons however—all firms or persons with whom the partners transact business—each partner is individually liable for all the partnership indebtedness. Each partner is liable for any act of another partner performed in the due course of the partnership business. Each partner is liable for the act of any other partner which is within the power of the other partner to perform. This liability refers to all cases of a general partnership. It does not refer to what has been termed a limited partnership. It is important therefore to know :

The Power of a Partner.—Each partner has unlimited power to transact any business within the scope of the copart-

nership and by his acts he binds each of the other partners. It must be an act strictly within the scope of the partnership business. If a partner attempts to do something not within the scope of the partnership business but outside of its objects and aims, he becomes personally liable, but does not render the other partners responsible. One partner may bind the firm by his admissions and declarations, by misrepresentation in the purchase or sale of property connected with the partnership business. He cannot use the property or credit of the firm for his individual benefit, and he cannot give the firm note for his individual debts. He may give the firm note for a firm debt, and even against the will of his partners he may assign all the firm property in payment of a firm debt.

Dissolution of the Partnership.—A partnership is dissolved (1) by the expiration of the period agreed upon at the time it was formed; (2) by the mutual consent of all the partners at any time thereafter; (3) by the act of one of the partners in making an assignment of his partnership interest, or in case no definite duration of partnership has been agreed upon, by his withdrawing or renouncing the partnership; (4) when an amicable dissolution cannot be had, by the decree of a court having jurisdiction, on the ground of improper or fraudulent conduct on the part of one of the partners; (5) by the death, insanity or bankruptcy of a partner; and (6) by the saleof a partner's interest after judgment against him, or by the happening of any other events which severs the unity of interest.

The Effect of the Dissolution.—Immediately upon the dissolution occurring, and after the liquidation of the firm's indebtedness, either of the partners is entitled to an accounting and a distribution of the partnership property. One partner can no longer bind the other partners by any individual act excepting such acts as are necessary to close up the partnership business. As to persons with whom a firm have been in the habit of dealing, however, one of the partners may have future dealings involving new business and new transactions, and thereby bind the others, providing notice of the dissolution has not been given. To avoid this, it is necessary and customary to give immediate notice of the dissolution to all persons

with whom the firm has been accustomed to deal, both by publishing a notice of dissolution in the newspapers and by sending notice by mail.

QUESTIONS.

Page 72.—What is partnership? How may the profits and losses be shared? What is customary if each partner contributes equal money, labor and skill? When is it customary to put the contract in writing? What is the written contract called, and what may it contain?

Page 73.—What is the main thing articles of copartnership should express? What is said about the formation of partnerships by oral agreement? What is a partnership by implication, and what does the law imply? What is a test of copartnership?

Page 74.—Under what circumstances may there be a sharing of profits without a copartnership? Who are dormant partners and what is their liability? Who are special partners? What are limited partnerships and when are they authorized? What is the liability of a general partner? To what extent may partners limit liability as between themselves? What power has one partner to bind the firm?

Page 75.—How is a partnership dissolved? What is the effect of a dissolution as to the power of one partner to bind the others? As to the rights of the partners? What notice of dissolution should be given?

CORPORATIONS.

The Definition.—They are associations composed of individuals united in one body with a franchise from the State or government which enables the body to transact business as one person. They are sometimes called artificial persons, because they are composed of one or more natural persons acting as an individual. The term corporation is sometimes applied to the franchise itself, under which the corporation acts and derives its rights. The definitions frequently speak of one or more individuals as composing a corporation. In England it has been customary to give certain ecclesiastical officers, as a Bishop or Dean, the powers of a corporation, in order to clothe him with some legal capacity or advantage. This is not common in the United States where corporations are composed of more than one individual.

The Object of Corporations.—The prime object is to enable the persons composing the corporation to act by one united will, and to continue the transaction of business beyond the life of a single individual. A partnership dies with the demise of one of the persons of a firm. The death, insanity or withdrawal of one of the individuals composing a corporation has no effect upon the corporation itself.

Kinds of Corporations.—The two main divisions of corporationsare : (1) Religious or Ecclesiastical and (2) Lay. Lay corporations are again divided into : (1) Charitable and (2) Civil. Religious and charitable corporations have much in common so far as their objects are concerned. Church societies are religious corporations in all cases where they are incorporated. Charitable corporations are formed for conducting various charitable enterprises, such as hospitals and homes for the sick and disabled.

Civil Corporations, are such as are chartered or incorporated for transacting any lawful business. It is this class of corpora-

tions only to which particular attention will here be called. Strictly speaking, townships, school districts, villages and cities are civil corporations, but their discussion belongs rather to the lawyer's text-book. They are sometimes called quasi or political corporations.

Creation of Corporations.—Corporations can have no existence unless sanctioned by the State or government. They are created by the State or government in two ways: (1) by charter, or (2) by general statutes, called in corporation acts. Formerly it was customary to apply to the legislature for a charter. The charter was a special statute creating the corporation, and particularly describing and specifying its powers and duties. The charter was its franchise, and when once obtained was construed to be a contract between the State and the corporation which could not thereafter be annulled or altered, unless the statute reserved such power in the legislature. To obviate the abuses which arose by the granting of special charters, most States have now enacted a statute covering all the purposes for which the State is willing that corporations may exist, and prescribing a general method of incorporation. Any number of individuals, not less than a certain specified number, desiring to form a corporation have only to comply with the statute in order to become a body corporate. If they desire to engage in a business not authorized by the general acts of incorporation, they must still apply to the legislature for a special charter. Some States authorize the formation of corporations for the transaction of any legal business.

Powers of Corporations.—They are:

1. To have succession.
2. To sue and be sued.
3. To make and use a common seal.
4. To purchase, hold and convey property.
5. To appoint officers and agents.
6. To make by-laws.

The Corporate Powers, as the foregoing powers are called, exist in all forms of corporations to a greater or less degree. They may be abridged or enlarged by the statute under which the corporation is created. The power of succession, for in-

stance, which is the power of the corporation to continue its existence, although some or all of the officers, stockholders and individuals composing it, should die or become incompetent, is limited to the term of existence authorized by the statute. In many States, corporations cannot be formed for a longer duration than fifty years. Sometimes there is a method provided by the State for renewing its existence at the end of that term for another period. The power to purchase and convey real property is frequently limited. The amount of real estate which a corporation may hold is ordinarily limited to some stated sum. This is especially so in the case of religious and charitable corporations. They are frequently exempt from taxation and, therefore, it is proper that the amount of property which they can hold, should be limited.

Government of Corporations.—A corporation is governed by its charter if it has a special charter, otherwise by the incorporation acts and statutes of the State where it is incorporated. It has no powers except such as the legislature may have conferred by the charter or the incorporation acts. Its internal affairs are regulated by the by-laws it may adopt. They must not conflict with the laws of the State. The corporation is supposed to reside in the State where it is incorporated and at the place where it has its principal office for the transaction of business. Corporations organized in one State may carry on business in another, subject to the laws of the other State. In the State where it is incorporated a corporation is called a domestic corporation. In any other State it is called a foreign corporation.

How a Corporation Acts.—It acts directly through its board of trustees or directors and indirectly through the stockholders. The incorporation statutes specify ordinarily the names of the officers of the corporation. Besides a president, secretary, and treasurer, there is usually a board of officers called directors or trustees. All these persons are elected by the stockholders, and immediately upon their election the corporation acts by their decisions or resolutions. An officer cannot bind the corporation by any contract he may make unless he has been empowered to make the contract by the board of di-

rectors or trustees, and in dealing with an officer of a corporation it is necessary to first ascertain what powers have been conferred upon him by the by-laws or by resolution of the governing board. A corporation being a fictitious person, it always acts by an agent, who may or may not be an officer of the corporation.

Stockholders.—They are the owners or holders of the capital stock of the corporation. The capital stock represents the corporate money and property. It is divided into shares of a specified value, most frequently $100. The profits made by the corporation are divided among the stockholders in proportion to the amount of the capital stock held by each. The profits are called dividends.

Liability of Stockholders.—This is wholly determined by the provisions of the statute under which the corporation is formed. In most of the States the stockholders are liable for the debts of the corporation only to the amount of their capital stock. They may lose what they put into the corporation—the amount of their stock—and no more. This exemption from liability, however, is usually conditioned upon the performance by the corporation of certain acts which the statutes say shall be performed, such as making correct reports annually of the state of the corporate business. The failure to perform the requirements of the statutes may subject a stockholder, trustee or director to the liability of paying all the debts of the corporation. The trustees or directors are held to a more strict and enlarged liability on the theory that they are more directly cognizant of and connected with the management of the corporate business.

Transfer of Stock.—The right of continuous existence, which has been called the right of succession, necessarily involves the transfer of capital stock. In case of the death of a stockholder, his stock can be sold and transferred by his executor or administrator. A stockholder may transfer his stock at any time by written assignment, although notice of the transfer must ordinarily be given to the company and a note of the transfer made on the stock books.

The Corporate Seal.—The right to have and use a common seal is one of the incidental powers of a corporation. In case

it becomes necessary for the corporation to execute a writing which must be sealed, the seal must be used. A corporation conveys real property and executes a conveyance by attaching its seal. In order to entitle an instrument to record it is provided in most States that the seal must be affixed to the instrument by one of the officers, under the direction and authority of the board of directors or trustees.

Dissolution of Corporations.—A corporation is dissolved (1) by the expiration of the time fixed by its charter or certificate of incorporation; (2) by act of the legislature expressly dissolving it for mismanagement or on grounds of public policy; (3) by voluntary surrender of the franchise or charter. Immediately upon the dissolution it is usual for a court having jurisdiction to appoint a person, called a receiver of the corporation, who liquidates its obligations, distributes its property among the stockholders and winds up its affairs.

JOINT STOCK COMPANIES.

Joint Stock Companies are associations of two or more persons under a written agreement that they, or the persons to whom they may sell their interests, shall continue the association for a specified length of time sharing the losses and dividing the profits. Associations of this nature are only possible in those States where they are authorized by statute. The facility with which corporations may now be formed in most States, by reason of the general incorporation acts, has caused joint stock companies to come into disuse. The statutes usually provide that the members or stockholders shall be individually liable for all the indebtedness of the company. One member cannot of his own individual act bind the association, as in case of copartnerships. The association is always formed by a written agreement signed by the members, and it continues for the time fixed in the agreement, although some or all of the original members may have died or become incompetent. Upon the death of a member, his estate is not released from liability, but the business goes on and his executors and administrators are liable, as such, for the estate's proportion of the

losses, so long as the capital stock belongs to the estate. The association acts like a corporation, through agents appointed by the governing board, who may or may not be officers.

COPARTNERSHIPS, CORPORATIONS, AND JOINT STOCK COMPANIES COMPARED.

As to Formation.—A partnership may be formed by oral agreement. A corporation or joint stock company can only be formed by a written agreement or certificate of incorporation signed by the members or incorporators.

As to Duration.—A partnership is dissolved by the death or incompetency of one of the members. A joint stock company or corporation continues for the period fixed in the association agreement or certificate of incorporation, although one or all of the members die or become incompetent.

As to Manner of Action.—A partnership business may be transacted by one of the partners with or without the knowledge of the others. One member of a joint stock company or corporation has not the slightest power to transact any business whatever, so as to bind the company or corporation, unless authorized by the company or corporation.

As to Liability.—One member of a partnership is liable for any act or contract made by another member. It is a liability to pay any or all indebtedness contracted by any other member, out of private and individual means, after the partnership property is exhausted. A member of a joint stock company incurs substantially the same liability. A member of a corporation, called a stockholder, ordinarily incurs liability only to the amount of the capital stock which he holds.

As to Liability After Dissolution.—A member of a partnership, or the estate of a deceased member, ceases to be liable for any new transaction after dissolution, because a copartner has no power to enter into a new transaction, provided due notice of the dissolution has been given. The estate of the member of a joint stock company or corporation continues to be liable either for the entire company indebtedness or to the extent of the stock held, until the stock is disposed of.

As to Division of Profits.—Members of a co-partnership share the profits according to the proportion they may have agreed upon at the time of the formation of the partnership. If they have made no agreement in that respect, the law will divide the profits equally, although one member may have contributed a much greater amount of money, or labor and skill, to the partnership business. The members of a joint stock company or corporation almost invariably share the profits, in proportion to the amount each has invested in the capital stock.

As to Ownership of the Property.—The members of a partnership are joint owners of the partnership capital and property. Each is entitled to the possession of the whole. The members of a joint stock company or corporation are not joint owners of the corporation property. No member has a right to the possession of the whole or any part. The members are several owners of the capital stock issued to them.

QUESTIONS.

Page 77.—What are corporations? What are their objects? What are the divisions of corporations?

Page 78.—In what ways are corporations created? What are charters, and what are general incorporation acts? What are the powers of corporations? What powers are frequently abridged and how?

Page 79.—How is a corporation governed? How do corporations act?

Page 80.—Who are stockholders? What is their liability? How is stock transferred? What are the uses of a corporate seal?

Page 81.—How are corporations dissolved? What are joint stock companies?

Page 82.—Compare copartnerships, corporations, and joint stock companies: (1), As to formation. (2), As to duration. (3), As to manner of acting. (4), As to liability. (5), As to liability after dissolution.

Page 83.—(6), As to division of profits; and (7), as to ownership of the profits.

GUARANTY AND SURETYSHIP.

Guaranty is an agreement whereby one person becomes responsible for the debt or default of another person. The courts and law books sometimes point out a slight distinction in the meaning of guaranty and suretyship. This distinction, however, is purely technical. It is sufficient for our purpose to consider them as meaning one and the same thing. Sometimes the agreement is called guaranty and sometimes it is called suretyship.

Formation of the Agreement.—The statute of frauds (page 20) decrees that "every special promise to answer for the debt, default, or miscarriage of another person" must be in writing. Therefore, the contract of guaranty and suretyship to be valid must be in writing, signed by the person who agrees to become responsible.

Illustration of the Contract.—If Adison R. Butler is offered a situation as assistant teller in the banking house of Granger & Wardwell on Wall Street, they may require some one to guarantee his faithfulness, and he requests his acquaintances, Messrs. Benham and Works, to act as sureties. The writing which is given need not be of any particular form so long as it expresses the intention of the signers to become his sureties. An informal agreement of this kind is sufficient for the specified purposes.

CONTRACT OF GUARANTY.

Whereas, *Addison R. Butler is about to be appointed assistant teller by Lyman H. Granger and Edward J. Wardwell, composing the firm of Granger & Wardwell, bankers and brokers, Wall St., N. Y., who require a guaranty of his fidelity: Now therefore, we, in consideration of one dollar to us in hand paid, hereby agree to and with said Granger & Wardwell that we will save them from all loss, harm, or damage arising directly or indi-*

rectly through the failure of said Butler to faithfully discharge his duties in such position, or through his failure to account for and pay over and deliver all moneys and property which may come into his possession or under his control.

Witness our hands and seals this 1st day of June, 1891.

WILLIAM R. BENHAM (Seal.)
ADAM C. WORKS (Seal.)

The Parties.—The illustration discloses that there are three parties to the agreement, as there are always three parties to the agreement of guaranty and suretyship. Butler is the principal debtor. He is the one who is primarily liable to perform the obligations imposed, and is called the principal. Granger & Wardwell are the creditors or the parties for whom the duty is to be performed, and Benham and Works are the guarantors or sureties.

The Principal and Collateral Contract.—The principal contract is between the firm of Granger & Wardwell, one party, and Butler, the other party. The collateral contract is between Granger & Wardwell as one party, and the sureties as the other party. In case Butler fails to perform his part of the contract by not rendering faithful service, there is a breach of the principal contract, and the collateral contract, which is the agreement by Benham & Works that he will perform them, is enforceable.

Other Forms of the Writing.—The writing which has been given as an illustration is an unlimited guaranty. It covers all loss or damage that Granger & Wardwell may suffer for all the time Butler may occupy the position. It is customary in practice in such a case, to have a writing drawn in the form of a bond. The amount of the penalty is fixed and the sureties or bondsmen are liable only to the amount stated in the bond. The term "bondsmen" is ordinarily and usually applied to sureties or guarantors who become responsible for a duty to be performed by another. The writing may be so drawn as to limit the time for which the guaranty holds good, and it may be drawn also so as to describe and define the particular acts for which the guarantor may become liable. If it is a guaranty of credit—for the payment of goods to be sold to another—it

may be continuing, that is, it may be a guaranty for the payment of goods successively sold, up to a specified value, within a specified time.

The Consideration of the Contract.—In the writing given for illustration, the sum of one dollar is recited as a consideration. This is called a nominal consideration, and is entirely sufficient. The words "for value received" render the contract valid. If the contract is made before or at the time of the making of the principal contract, the principal contract itself is a consideration for the collateral contract. If made after the making of the principal contract, to use the illustration, after Butler has commenced his duties, there must be a new consideration coming either from Butler, or from Granger & Wardwell, to the sureties, in order to make the guaranty valid.

The Liability of Sureties.—The surety or the guarantor cannot be sued upon his contract of guaranty and suretyship until the principal for whose credit and faithfulness he has assumed responsibility has made default in not complying with the terms of the contract. There must be a breach of the principal contract before resort can be had to the collateral contract. Moreover, the liability of the guarantor is strictly confined to the terms of the written guaranty. In the illustration, the guaranty is for a faithful performance of the duties of assistant teller, and the guarantors can only be held responsible for unfaithfulness of Butler while performing the duties of that position. If Granger & Wardwell allow Butler to perform the duties of cashier, a far more responsible position, and thereby increase his opportunities for unfaithfulness, the guarantors are not liable for loss resulting thereby.

Suretie's Rights Against the Principal.—If the surety or guarantor is obliged to pay the debt of his principal he may proceed immediately to collect of the principal whatever he has paid. If the creditor has securities given by the principal, the surety is entitled to them, in order to protect himself. In other words, the surety is entitled to all the rights which the creditor may have against the principal. This is called the right of subrogation.

Rights Between Sureties.—If two or more sureties have

signed a contract of guaranty, in other words have become bondsmen, they are bound to contribute equally to make the guaranty or bond good. They may be strangers to each other at the time of the execution of their contract and may have executed it wholly independent of each other, but if their principal fails to perform what they agree he should perform, then each becomes equally liable. The creditor is not obliged to collect of each in equal proportions. Granger & Wardwell, the creditors in the illustration, may collect their whole loss or damage of either Benham or Works, as they prefer. If they do so, however, then the surety who pays the loss may sue his co-surety for his proper proportion.

Discharge of Sureties.—A surety may be discharged or relieved from liability upon the contract of guaranty; (1) by the expiration of the time for which the guaranty is given, whenever that time is expressed, (2) by the surety giving notice to the other parties, in case the guaranty is given for an unlimited time, that he elects to terminate the contract and will no longer be responsible; (3) by the creditor and principal entering into a different arrangement or agreement from that contemplated and referred to in the contract of guaranty, or altering the contract itself by erasure or interlineation; (4) by extension of the time of payment, whenever the guaranty is for the payment of a debt or the performance of a duty at a specified time. When that time arrives if the creditor wishes to hold the surety responsible he must strictly enforce the principal's agreement. Whenever the debt is due he must not give the principal further time to pay it. He need not sue immediately. It is sufficient if he at all times may sue. He releases the surety only when he makes an agreement with the principal for an extension of time whereby he cannot sue the principal or collect the debt until the expiration of the time; (5) by fraud practiced upon the surety by the creditor, or by the principal with the creditor's consent. Fraud vitiates every contract.

Guaranty of Payment and Collection.—This usually refers to a guaranty of payment of commercial paper, negotiable or non-negotiable. It may refer to a guaranty of payment or

collection of any written contract to pay money. Referring to guaranty of negotiable paper (page 52), it is seen that there is quite a distinction between guaranty of "payment" and guaranty of "collection." Guaranty of payment is an agreement by the surety that if the amount is not paid when due, the surety will immediately pay it without any effort having been made to collect it from the principal. Guaranty of collection is an agreement by the surety that he will pay it after due legal proceedings have failed to collect it of the principal. In the first case the surety may be sued immediately upon the failure of the principal to pay the amount when due. In the latter case the surety can be sued only after the principal has been sued.

QUESTIONS.

Page 84.—Define guaranty. What is said regarding the distinction between guaranty and suretyship? How is the agreement formed? What, if any, are the requisites of the writing?

Page 85.—Name the parties to the contract. Distinguish between the principal and the collateral contract. What other forms of the agreement are usual, besides the one used for illustration?

Page 86.—What consideration is necessary? What is the liability of the sureties? What are the sureties' rights against the principal? What are the rights between sureties?

Page 87.—How may sureties be discharged? Distinguish between guaranty of payment and guaranty of collection.

COMMON CARRIERS.

Common Carriers are such persons or corporations as undertake to carry freight or passengers for hire. They hold themselves out to the world as ready and willing, under all circumstances, to transport the persons or goods of all who choose to employ them.

Two Kinds.—Common carriers are either (1), inland carriers who transport by land or water or (2), carriers by sea. Carriers by sea have necessarily only one mode of conveyance. Inland carriers may transport by railway, steamboat, stage line or truck. A man who holds himself out as in the business of conveying goods or passengers from one part of a city to another by truck or hack, comes within the definition of a common carrier.

The Obligation to Carry.—A common carrier is under obligations to take all goods and passengers that come, provided his means of transportation are adequate and a reasonable compensation is offered. We have seen that he is not a person who transports goods or passengers occasionally at his pleasure or for want of other employment. It is his business, and therefore the law makes it his bounden duty, to receive and carry all that comes, without discrimination. If he discriminates or unlawfully declines, he is liable to pay damages. The business is mainly confined to corporations, such as railway, steamboat and express companies, and when we speak of "his" liability we mean an artificial person as well as a natural person. The carrier may refuse to carry passengers not in a proper condition to be received, as for instance a drunken or an insane man, who might endanger his fellow passengers. He may refuse to carry dangerous articles or articles improperly packed.

The Compensation.—The price for carrying is frequently fixed by the agreement of the parties. If not so fixed, the carrier can collect what will be a reasonable compensation in

view of the duty performed. Many States have wnat are called railroad commissions appointed and authorized by legislative statutes, who fix the rates of transportation within the State. The United States railroad commission has general supervision over all carriers whose lines extend through the different States.

The Contract.—When you deliver your goods to a carrier, or apply yourself, to be transported and the carrier undertakes to transport, whether the compensation is paid in advance or to be collected at the end of the route, the contract thereby entered into between you and the carrier is certain and definite. It is this: The carrier agrees to transport you, or your goods safely, to the required destination. He agrees not only to carry but to carry *safely*, and he is liable for any injury, excepting injury arising "by act of God or the public enemy;" meaning any accident produced by physical cause which cannot be guarded against, such as lightning and hurricane, an extraordinary flood, or attack by the army of a nation with which your nation is at war. The carrier is not even excused from loss occurring from any of the causes named, provided the accident could have been averted by proper care and caution. In short, the carrier is an insurer against loss or damage during transportation. The mere fact that loss or injury occurs, gives rise to the presumption against the carrier, that there has been negligence and want of care. No form of contract imposes a larger or more strict liability than the contract for the transportation of passengers or freight. It is sometimes said that the carrier of passenger does not assume the same liability as the carrier of goods. The law, however, holds him to the exercise of extraordinary care. It compels him to do all that human skill and foresight can do to avoid accident, and therefore the liability assumed is little less than that resting on the carrier of goods.

The Termination of the Liability.—The liability does not terminate until the carrier has fully performed his duty. His duty is not performed until he has safely deposited the passengers or goods at the proper destination. In case of a passenger it is not enough to bring the passenger to the station. The liability continues until the passenger has had a reasonable

opportunity to alight and leave the carrier's grounds and buildings. In case of freight the liability continues until the owner has had a reasonable opportunity of taking the goods away. If they are not taken directly from the vehicle of transportation within a reasonable time, it is the carrier's duty to place them in a proper warehouse from which the owner can receive them. That is the custom usually followed. After they have been placed in the warehouse, the carrier is no longer held to the strict liability as carrier. The liability is then that of a warehouseman, who is merely bound to use ordinary and reasonable care.

Limitation of Liability.—The carrier may limit his liability as to amount or as to the nature of the damage for which he is to be responsible. The limitation can only be effected by an express agreement, entered into at or before the goods or passengers are received. The agreement must be a condition and a part of the contract of carriage. It must be clear and definite. It must be entered into with the full knowledge and assent of the passenger or owner of the goods. The mere fact that there is a condition limiting liability, printed on a ticket sold, or on a bill of lading, will not bind a passenger or a shipper, unless it is brought to his notice and he assents to it.

Delivery by Carrier.—A common carrier must deliver freight according to address or instructions and is liable for a delivery at the wrong place or to the wrong person. Delivery is largely regulated by custom. A railway company ordinarily delivers goods only at a station. On their arrival it is the duty of the company to give due notice to the person entitled to receive them, and as we have already seen, if they are not taken away, the company is then obliged to place them in a proper warehouse. In such case, it has a lien on the goods for storage. An express company is bound to make actual delivery at the place of business or residence of the consignee. A carrier by sea is bound simply to unload the goods at the customary wharf or pier, having given due notice to the consignee of their arrival.

The Carrier's Lien.—If the compensation for the transportation of goods is not paid in advance the carrier has a lien

upon them for the amount. That is, he may claim and withhold possession of them until the compensation is paid. Unless the compensation is paid in advance by agreement the carrier of the goods cannot collect it until the goods are ready for delivery. The rule of law is that, in the absence of a contrary agreement, compensation for carriage of freight is not due until the goods are ready for delivery at their destination.

The Baggage of Passengers.—The sale of a ticket to a passenger carries with it the right of the passenger to have carried for him ordinary personal baggage to a reasonable amount. Just as he may limit his liability for goods, the carrier may limit his liability for baggage. The agreement, however must be fully and mutually entered into. By "personal baggage," is not meant merchandise which the passenger may wish to be transported, but only such things as are usual and necessary for a traveler to carry with him for his personal comfort and use considering the nature and extent of his journey. If he wishes to carry articles not properly included in the personal baggage of a traveler, he must call the carrier's attention to the fact and thus secure the carrier's consent and, if required, pay the extra compensation.

QUESTIONS.

Page 89.—Define common carriers. What are their divisions? What is the extent of the duty of a carrier with reference to receiving freight or passengers? What is the carrier's compensation?

Page 90.—What is the carrier's contract and liability? When does the liability terminate?

Page 91.—How may the liability be limited? What is not sufficient to limit the liability? What is the carrier's duty regarding delivery? If freight is not delivered to and received by the consignee, what is the carrier's duty regarding it? What is the carrier's lien?

Page 92.—What is a carrier's duty regarding baggage, and what is baggage?

INNKEEPERS.

Innkeepers are persons or corporations maintaining public houses for the entertainment of travelers and guests. Like common carriers, innkeepers are lawfully bound to receive the traveler and his baggage. They must entertain all persons who apply for entertainment in a proper condition to be received and able to pay the price. The innkeeper holds himself out to the world as in the business of entertaining guests. He is not like a boarding house keeper who accepts such as he chooses and enters into a special contract with the boarder, at a fixed rate, before the entertainment commences. No express contract is necessary to create the relation of landlord and guest. The reception of the guest by the innkeeper or landlord, as he is usually called, gives rise to the contract by implication.

Who are Guests.—They are all such persons as come to the inn for the purpose of being entertained. They must go there with the intention of becoming guests, expecting to pay the usual compensation charged by the inn. The law presumes it to be, and it must be, a reasonable compensation. The guest is entitled to reasonable entertainment, considering the circumstances of the inn. He is bound to accept such accommodations in such rooms and at such tables as the landlord may designate.

The Landlord's Liability.—The innkeeper is liable for any loss or damage which may occur to the property of the guest. The liability is substantially the same as that of a common carrier for the goods he attempts to carry. If the guest is robbed, either by burglars or dishonest servants of the inn, the landlord is responsible, unless the robbery resulted from the guest's carelessness. The responsibility commences whenever the guest's baggage comes within the landlord's care. It may be the delivery of a check to the hotel porter at the railway station, or it may be by placing baggage at any point within

the precincts of the inn, providing the attention of the landlord or his servants is called to the fact. It continues until the guest has settled his bill and taken his permanent departure.

Limitation of the Liability.—In many States there is a method provided by statute, by which the landlord may limit his liability. The statutes usually require the landlord to post notices in all rooms and at other conspicuous places in the hotel, to the effect that he will not be liable for money or valuables unless deposited with the clerk at the office. The statutes must be strictly complied with. The exemption does not apply to such articles as the traveler may require to use and which his convenience requires shall be taken to his room. Many States have enacted statutes prescribing various conditions and restrictions regarding hotel keeping besides the method of limiting liability.

The Landlord's Lien.—Hotel keepers may demand compensation for entertainment in advance. If it is not paid in advance they may hold possession of the guest's property and baggage until the bill is settled. In any event, possession of baggage may be retained until the compensation is paid.

Boarding House Keepers, unlike innkeepers, are not bound to receive and entertain all who come. The boarding house is not supposed to be open to the public at large and the proprietor does not assume the liability of a hotel keeper. A hotel keeper may take boarders, however, and not assume the innkeeper's liability toward them. At the same time the guest at a hotel may make a bargain for his entertainment by the week, and yet the circumstances not be such as to relieve the landlord from his liability as innkeeper. The intent of the parties has much to do in deciding whether a person is a boarder or a guest. In some States the statutes give boarding house keepers a lien on the boarder's personal effects, for board bills.

QUESTIONS.

Page 93.—Who are innkeepers? Who are guests? What is the landlord's liability?

Page 94.—How may it be limited? What is the landlord's lien? Distinguish boarding house keepers from innkeepers.

CONTRACTS OF HIRE.

Contracts of Hire, are agreements concerning personal property whereby a compensation is to be paid for its use, or for labor and services to be performed about it. There are four classes of these contracts. They are (1) hire of things, (2) hire of services, (3) hire of custody, (4) hire of carriage.

The Hire of Things, is a hiring of the use of personal property for a compensation. The owner lets the property to the hirer. The owner's liability is slight. He must not interfere with the possession of the thing after he has delivered it to the hirer. He does not warrant the safety or utility of the thing for which it is let, excepting by express warranty. At the same time, if for instance, he keeps a livery stable, he must not let to a customer, a horse which he knows to be unruly and vicious, and which may endanger the life and safety of the hirer.

The Hirer's Liability, is limited to the exercise of ordinary prudence and care in the use of the thing hired. If he hires a horse he must feed, water and drive it with such care and foresight as a man of reasonable prudence would exercise in the management of his own property. He is answerable for ordinary neglect. His responsibility continues as long as the property is under his care or the care of his servants. He is bound to use the property in the manner agreed upon and for the purpose for which he engaged it. If he hires a horse to drive to a certain place and drives it to a much greater distance, he is liable for any resulting damage. If he hires a horse for a drive he cannot use it for any other purpose. If he does so and it is injured or killed, even without his neglect, he is guilty of converting it to his own use, or of "conversion," as the law calls it, and he is bound to bear the whole loss. When he is through with it, he is bound to return it to the owner in as good condition as when he received it, excepting natural wear and unavoidable accident.

The Hiring of Services.—This does not refer to the hiring of an employee at a stated salary for a stated time. It refers to the hiring of services for the purpose of performing some work about an article of personal property, as when a watch is delivered to a jeweler to be repaired and returned.

The Workman's Liability.—The workman is liable for failure to use that degree of skill and caution which the nature of the service demands. The degree of care and diligence which he must use, depends upon the skill required to perform the service. If the contract is for the exercise of the personal skill of the workman, he cannot delegate the work to a servant. The jeweler might turn over the watch to one of his workmen to be repaired, but if you employ a portrait painter, in whose personal skill you have confidence, to retouch a family portrait, he must do the work himself. If the materials are furnished the workman he must use them. He cannot use others. He is not liable for damage so long as he has used ordinary care and prudence in the care of the article while in his hands. If the property is destroyed by fire arising without fault of his, the owner and not the workman suffers the loss.

The Hiring of Custody.—It is an agreement for the keeping and care of personal property for a compensation. There are four classes of persons who undertake to keep and care for property. They are (1) warehousemen, (2) wharfingers, (3) forwarders, and (4) agisters of cattle.

The Duties Undertaken.—Warehousemen agree to keep and care for property intrusted to them for storage, in buildings or warehouses provided for the purpose. In all large cities, storage warehouses are established for the convenience of persons who desire to store goods. The owners occupy the position of warehousemen. Common carriers become warehousemen as soon as they have placed goods which they have carried, in the freight houses or places provided. Wharfingers keep wharves and piers for the purpose of receiving and shipping goods. The ocean steamship companies do not ordinarily own the wharves or docks where they receive and land passengers or goods. The dock owners or wharfingers receive a compensation from the shipper of goods called "wharfage."

Forwarders receive and forward goods. Agisters of cattle are such as receive cattle or horses for pasturage, or to be cared for in boarding stables.

Their Liability and Rights.—Any of these persons who undertake to receive and care for property for a compensation, are bound to use ordinary care and diligence in the keeping of the property. They are liable for ordinary neglect. They have liens upon the property, or may hold possession of it, until their compensation is paid. If the compensation is not fixed by agreement, they are entitled to a reasonable compensation.

When Not Liable.—Whenever persons of this character, or persons who do not make it their business, consent to receive and care for property, without compensation, they are not liable for loss, unless grossly negligent. They would be considered grossly negligent in case they failed to exercise that ordinary care which every man of common sense, however inattentive, takes of his own property.

The Hiring of Carriage.—This is an agreement made with common carriers for the carriage of goods, and it has been already fully discussed.

QUESTIONS.

Page 95.—What are contracts of hire? Name the four classes. What is the hire of things, and what is the owner's duty and liability? What is the hirer's liability?

Page 96.—What is the hire of services? What is the workman's liability? What is the hiring of custody? What are the duties undertaken?

Page 97.—What is the liability of the persons undertaking the care of property for a compensation? What is the liability if they do not receive a compensation?

INSURANCE.

Insurance is a contract by one party, called the insurer, to indemnify another party, called the insured, against loss or damage. The loss or damage against which the insured is indemnified depends upon the kind of insurance, of which there are three: (1) life, (2) fire, (3) marine. Accordingly there are three ordinary losses against which the insurer undertakes to indemnify. They are (1) loss by death; (2) loss by fire; and (3) loss by the perils of the sea.

Indemnity Against Loss by Death, is life insurance. It is supposed that some one suffers loss by the death of every person, and the contract of the insurer is usually to pay a certain sum of money to a person named in the agreement, upon the occurence of the death of the insured. The person to whom the money is to be paid is called the beneficiary. The agreement is primarily to pay upon the occurence of death. The money may be payable to the insured himself, however, when he reaches a specified age, providing he survives until that time. The contract is always in writing, as in all cases of insurance. It is called the insurance policy.

Indemnity Against Loss by Fire, is fire insurance. The contract is to pay the person insured damages resulting from fire, either to buildings or goods, not exceeding the maximum sum named in the policy. In case of total destruction of the property insured the maximum sum is to be paid, providing the property is worth that amount. In case of partial destruction the actual damage is to be paid. Fire insurance policies sometimes cover loss by lightning. They do not cover loss by tornadoes, but hurricane or tornado insurance is common in those States subject to wind storms.

The Policies.—In most of the States, statutes have been enacted prescribing the terms of the contract. That is, the conditions which shall be contained in the policy. In order to

ascertain what agreements a policy cannot or must contain, examination should be had of the statutes of the State where the property is located and where the insurance is effected. In the State of New York, for instance, all fire insurance policies are alike. Each company engaging in the business of insurance there is bound to make the same terms and conditions and to issue the same form of policy. There is not the same uniformity with regard to life insurance policies. Greater latitude is ordinarily allowed in most of the States in the matter of the terms to be inserted than in case of fire insurance policies. Nearly every life insurance company has some particular or special form of policy, or some special agreement which is inserted in its policies, and which is offered as an attraction to persons desiring insurance.

Usual Conditions of Fire Insurance.—There are certain conditions which are inserted in fire insurance policies in nearly all States. For instance, the insurance company is only liable for the actual loss sustained, although the property may be totally destroyed, and the maximum amount specified in the policy is greater than the actual loss. Any change in the location, condition, or use of the property made after the policy is issued which increases the risk, avoids the policy. The insured must have an insurable interest, that is, such an interest in the property as authorizes him to protect it by insurance in his own name. The insurance company is entitled to immediate notice of the loss, accompanied by such proofs as it may demand according to the terms of the policy.

Usual Conditions of Life Insurance.—The policy usually becomes void by the failure of the insured to pay the premium when due. The premium is the compensation paid the insurer for the undertaking of indemnity. In case of life insurance it is ordinarily payable annually or semi-annually. In case of fire insurance it is payable in advance for the whole term of the policy. Life insurance is avoided in case the insured removes his residence beyond the seas, or to another place and thereby effects his chances of life. For instance, the insured is not allowed to travel in tropical countries, where he would be subjected to the dangers of cholera or yellow fever.

Fraud and Concealment.—Any deceit practiced by the person securing the insurance regarding the property insured, in case of fire insurance, or regarding his own health, age, and the like, in case of life insurance, avoids the policy. Likewise any concealment of facts which the insurance company should know avoids the policy. It is scarcely necessary to repeat that fraud vitiates every contract.

Representations and Warranties.—Any representations made by the insured which are material to and effect the risk and which are false or fraudulent, will avoid the policy. Such representations are ordinarily all statements of fact concerning which the company inquires before accepting the risk. Any statements made in the policy itself which are false or fraudulent, are in the nature of warranties and render the policy absolutely void at the election of the company.

Accident Insurance.—In addition to the kinds of insurance which have been mentioned, the business of accident insurance has assumed, within recent years, large proportions. It is in the nature of indemnity against loss or damage by accidental means. In order to collect loss under the policy, the insured must usually have suffered some outward and external accident, producing a visible effect.

Hints About Insurance Policies.—Read your policies. Be careful regarding the truth of the statements you make at the time of applying for insurance.

An untruth in the written application which you are obliged to make for life insurance, or an untruth orally stated in applying for insurance on property, may be taken advantage of by the company.

If you desire some condition inserted in the policy which is not in the ordinary policy issued by the company, or desire insurance subject to any special agreement not ordinarily made by the company, see to it that the condition or special agreement is assented to by the home officers of the company.

An ordinary insurance agent has no power to bind the company by any arrangement or agreement he may make outside of the usual course of the business.

In case you desire to assign your policy, secure the consent of

the company. An assignment without such consent usually avoids the policy.

In case you desire to make a change in your residence or in the use and location of property insured, secure the consent of the company. Any change enhancing the risk, avoids the policy.

Having carefully read your policy you may discover that you have no insurance. The reason is that the ordinary policy contains many exceptions, reservations and conditions which, if strictly construed by the courts and insisted upon by the company, would, in a great majority of cases, enable the company to refuse payment of the loss. This is especially applicable to fire and accident policies.

QUESTIONS.

Page 98.—What is insurance? What is the insurance policy? What is life insurance? What is fire insurance? What do fire insurance policies usually contain? How are the terms of insurance policies usually governed?

Page 99.—What are some of the usual conditions of fire insurance? What are some of the usual conditions of life insurance?

Page 100.—What effect will fraud or concealment have on an insurance policy? What is said regarding representations and warranties? What is said regarding accident insurance? What is the most important of the matters referred to in the hints?

LIENS.

A Lien is the right of one person to retain the possession of the property of another. The right exists for the purpose of satisfying the claim or charge concerning the property. The right expires only when the claim or charge is satisfied or paid. It cannot be exercised after the person in whose favor it exists, has delivered possession of the property to the owner.

Creation of Liens.—Liens are created in three different ways: (1) by law, (2) by usage, (3) by agreement of the parties. A lien is said to be created by law when it is provided for by a statute law or is recognized by the common or maritime law. It arises by usage in case where custom from time immemorial has allowed it, and in the third case it may arise whenever the parties may agree that it shall exist. It may arise by express agreement between the parties, or, if the person receiving the goods gives notice in advance that he will claim a lien, and the owner does not object, the lien arises by implied agreement.

Two Kinds of Liens.—Liens are either general or special. A general lien is the right to detain any property of the debtor which may come into the creditor's hands, in order to satisfy a general balance due on account. Agents and commission men have a general lien upon property of their principal, to satisfy unpaid commissions arising out of previous transactions. Special or particular liens exist only as against the particular property concerning which the claim or charge arises. We have seen that common carriers have a lien for the freight upon goods carried. Warehousemen have liens upon goods stored, for the storage. Workmen employed to repair or perform any service upon an article of personal property, have a lien for the amount of their charges. These are special or particular liens.

Requisites of a Lien.—There must be the subject matter or the thing upon which the lien is claimed; it must have lawfully come into the possession of the person claiming the lien and still be in his possession at the time the lien is claimed; there must be an indebtedness in his favor against the owner.

Waiver of Lien.—A person who would be lawfully entitled to a lien may waive it by expressly agreeing that he will not insist upon it; by neglecting to assert it when he intends to rely upon it. If the goods are in the possession of another and are demanded by the owner, and the person having possession refuses to deliver them, he must refuse upon the ground that he has a lien, otherwise he waives that right. A lien is waived also by any new agreement between the parties to the effect that the debt shall be paid in some other manner, or, as we have seen, by the surrender of the property by the person entitled to the lien. Liens are enforced according to the manner in which they are created. If they are created by statute the statute usually provides a method of selling the goods to satisfy the lien. Many States have adopted statutes specifying that liens, however created, shall be enforced by the sale of the goods in a specified manner and the proceeds applied to the satisfaction of the lien.

QUESTIONS.

Page 102.—What is a lien? What is its purpose? How long does it exist? How are liens created? When is a lien created by law? When by usage and when by agreement? Distinguish between general and special liens by referring to the illustrations.

Page 103.—What are the requisites of a lien? What are the two ways mentioned whereby a lien may be waived? Illustrate them.

THE PLEDGING OF PERSONAL PROPERTY.

Definition.—It is the delivery of personal property by the owner, to a creditor as security for the payment of a debt, or the performance of an agreement. It is somewhat analogous to liens, for the reason that the person to whom the property is delivered, is said to have a lien on it, or may hold possession of it, until the debt is paid, or the agreement performed.

Delivery of the Property.—The pledging is complete upon the actual delivery of the property from the debtor to the creditor. By actual delivery is meant either a delivery whereby the creditor takes manual posession of the property, or constructive delivery, which we have seen is a delivery by turning over possession of something that represents the property, as a bill of lading, or a freight receipt. It may be the delivery of the key to the place where the property is stored. The pledging may also be done by the execution and delivery of a written agreement of pledging, called a chattel mortgage.

The Contract of Pledging.—The agreement between the debtor and creditor is to the effect that the debtor shall have a certain right of property in the articles pledged, in case the debtor fails to pay the debt, or perform the agreement for which the goods are delivered as security. It will be seen, therefore, that the contract of pledging is a collateral contract. It is collateral to the performance of the original contract, which is the payment of the debt. If that is not paid, the collateral contract may be enforced.

How Enforced.—Most of the States have enacted statutes, prescribing how the creditor shall enforce his rights against the property pledged. It is usually provided that the property shall be sold in some public manner, upon due notice to the owners. The creditor may take the proceeds of the sale to satisfy the debt or cover his damages arising from a failure of

the debtor to perform the agreement. At any time before the sale the debtor may redeem his property by satisfying the charge for which it was pledged. Pawn brokers are persons engaged in the business of receiving articles of personal property as pledges or pawns, for the payment of money loaned or advanced by them, to the owners.

Chattel Mortgages.—In order to constitute a valid pledging, there must be an actual delivery of possession of the property pledged, except in case of pledging by mortgage. A mortgage of this kind is called a chattel mortgage. All species of personal property may be pledged by the execution and delivery of a mortgage. The mortgagee, who is the creditor, becomes vested with the right to the possession of the property if he chooses to assert it, but it may be left in the possession of the owner and debtor, providing the mortgage is duly filed or recorded in the proper public office. The statutes of each State regulating the mortgaging of personal property, usually prescribe the terms and conditions which the mortgage must contain and specify when, how and where it must be recorded or filed.

QUESTIONS.

Page 104.—Define pledging of personal property. To what is it analogous? How may the delivery be perfected? What is the agreement involved? What is the principal and what the collateral contract? How is the contract of pledging enforced?

Page 105.—Under what circumstances may the debtor redeem the property? When is an actual delivery of the property unnecessary? What is a chattel mortgage? How are such mortgages negotiated?

INTEREST AND USURY.

Interest, is a compensation paid for the use of money. In early times the law prohibited a person loaning money, from receiving or demanding any compensation for its use. In this age, interest is everywhere allowed, although the rate is variable. In some States the parties may agree upon a rate of interest which shall be paid. In such States the rate is said to be unlimited. In other States the rate is fixed by law. If money is loaned, or if a contract is made for the payment of money, with interest, the rate per cent. not being specified, the legal rate is always presumed. The parties may agree upon any rate of interest less than the legal or highest rate allowed by law, in the State where the contract is made. They cannot agree to a rate in excess.

When Interest is Allowed.—It is allowed in three instances: (1) Whenever the parties agree that interest shall be payable. This is the case usually with all kinds of commercial paper, although as we have seen, negotiable paper does not draw interest unless it is so stated in the writing. (2) Interest is allowed upon debts remaining unpaid after maturity. If you purchase a bill of goods on thirty days' time, and do not pay at the end of thirty days, interest commences to run on the amount thereafter. In the case of a running account, interest commences from the time a statement of the account is presented, and the balance demanded. (3) The third class comprises all instances in which an agreement to pay interest is implied. If you purchase the bill of goods on the understanding that you are to pay cash, instead of having thirty days' time, it will be implied that you are to pay interest if you fail to keep your agreement, and interest commences on the value of the goods, as soon as they are delivered to you.

Usury, is the taking of illegal interest. All interest is illegal which is at a higher rate than allowed by law. Any agreement

which provides for a higher rate of interest than is allowed by law, is said to be a usurious agreement. The result of demanding or receiving usury, depends upon the statute of the State. In some States the creditor forfeits the interest, both the legal and the usurious. In other States he forfeits both principal and interest.

Illustration.—If you apply to a money lender for a loan of a thousand dollars, and he agrees to loan you the money with interest, upon your paying him a bonus of fifty dollars, the agreement is usurious. It is an agreement for the payment of more than lawful interest. If the transaction occurs in the State of New York, for instance, the money lender forfeits the thousand dollars as well as the interest upon it. He cannot, by law, collect the money. If you give him your note or a mortgage for the loan, the paper would be void and could not be enforced by him. In other States he might collect the principal, that is, the thousand dollars, but could not collect any interest upon it. Any subterfuge which is resorted to in order to evade the law, renders the agreement as usurious as though it were expressly provided that usury should be paid.

What is Not Usury.—An agreement for the payment of usury, made after the principal has been loaned, or the original debt contracted, is not usurious. In other words, the payment of usury must be a part of the agreement for the loan. Professional money lenders usually avoid the statutes against usury by making a contract for the indorsement of negotiable paper. For instance, when you apply to the money lender, he may in substance say: "I haven't any money of my own to loan, but if you will make your promissory note, I will indorse it, providing you will pay me fifty dollars for my indorsement. If I indorse it, I know where you can get it cashed." Now if this is the real agreement, the transaction is not usurious. The man loans his name and credit for your accommodation. He guarantees your paper, and the law says that he may demand and receive any amount whatever, for his indorsement. On the other hand, if it is merely a subterfuge to evade the usury law, and as a matter of fact, it is his money which is finally used to discount the paper, and he is the real lender and cred-

itor, the contract is usurious. The business is so conducted, however, that it is difficult for the borrower to prove the subterfuge, and the contract will ordinarily be upheld. It is not usurious to buy negotiable paper, or bonds and mortgages, after they have been made and delivered, although they are purchased for much less than their face value.

Interest Upon Interest, or compound interest, is not lawful, providing the agreement to pay it is made in advance. After interest is due, however, if a person owing it agrees to pay interest upon it, such interest upon interest can be collected. In some States the interest laws are such, that an agreement to pay interest upon past due interest will be presumed, and no express contract is necessary in order to collect it.

The Result of Usury.—We have seen that in some States the making of a usurious agreement prevents the lender from collecting any interest whatever, either the lawful or the unlawful, while in other States the lender loses both principal and interest. Ordinarily one of these results happens, but there are a few States in which the only result is the loss of all interest above the lawful rate. The general rule is, moreover, that the borrower can recover from the lender all moneys which may have been paid above the lawful rate, and all securities given for a usurious debt are void.

Conflict of Laws.—By referring back to the chapter on Contracts, page 22, we see that according to the law of place a contract lawful in the State where it is made, and to be performed there, is lawful everywhere, but if a contract is to be performed in another State, it must also stand the test of the laws of that other State. An agreement, therefore, to pay interest, must be for the payment of the lawful interest in the State where the agreement is to be performed.

QUESTIONS.

Page 106.—What is interest? When is interest allowed? What is usury?
Page 107.—Give an illustration? What agreements are not usurious?
Page 108.—What is the rule regarding compound interest? What is the result of usury? How does the law of place apply to usury.

MASTER AND SERVANT.

The Parties.—It can almost be said with truth, that nearly every person, at some time in life, is either a master or a servant. These are the terms used in law. In ordinary business language, the master is called the employer, and the servant the employee. Both parties must be of full age. An infant is not bound by a contract to perform services. An infant may recover in a suit at law, whatever the services performed are worth, although greater than the price for which he has agreed to work. The parents of an infant are entitled to his wages. Unless the parents have given him his time, they can collect his wages although payment has been made to the infant himself.

The Nature of the Contract.—It is an agreement by a servant to perform general or particular service for the master, for a compensation called wages. If the servant is engaged for some specified and particular duties which are agreed upon at the time of employment, he cannot be compelled to perform different duties or more difficult labor in another department. On the other hand, if the contract of employment is general in its nature, the employee is bound to labor in any particular line which the employer may direct, excepting that he cannot be compelled to devote his time to extra hazardous and dangerous occupations, not contemplated at the time of the employment. If the employment is to be for more than one year, or is not to be completed within one year from the time it is made, it must be in writing, otherwise it may be oral.

The Compensation.—If it is not expressly agreed upon at the time the employee enters into the service, he may collect the reasonable value of the services. This value is generally ascertained and fixed by the usual price of like services at the time and place of the employment. In any employment requiring skilled services, the time, study and expense which the employee has been put to, in acquiring the necessary skill, is

taken into consideration. When one performs services for another, it is presumed that compensation is to be paid. Excepting in case of such services as men constantly render one another, and are always considered gratuitous, nothing short of the agreement of the servant that he is to work without compensation, will prevent him from collecting the reasonable value of the service performed.

The Duration of the Employment.—If the time of service is not fixed by the agreement of the parties at the time the employment is entered into, it is discretionary with either. Either may end the term at any time. The employer may discharge the employee at any time for habitual neglect of duty, incompetency, wilful disobedience or immoral conduct.

The Servant's Obligations.—If the employee offers himself for professional employment, or an employment requiring skill, he undertakes: (1) that he possesses that reasonable degree of learning and skill ordinarily possessed by those engaging in that employment; and (2) that he will use reasonable and ordinary care in the exercise of that skill. For a failure in these undertakings he is liable. If the employment is for a stated time, the employee is bound to serve for such time, excepting in case of sickness or physical incapacity, arising without his fault. If he wilfully abandons the employment before the expiration of the term, he cannot collect compensation. In no case can the employee collect compensation where the contract of employment is entire, unless he can show that he has fully performed it. That is to say if he leaves the employment without cause before the expiration of the term, he loses the wages for the time already served.

The Employer's Obligations.—The employer is bound to provide the employee with labor for the full time agreed upon. The fact that his business turns out unprofitable, or that he chooses to discontinue it, or that he has no work for the employee to do, will not relieve him from paying the compensation, although the employee remains idle. If he by persecution or other act, prevents the employee from laboring, he is equally liable to pay compensation. He is also bound to employ competent fellow servants, and to furnish proper and safe tools and

appliances, for the employee's use. He is not liable, however, for an injury happening to an employee through the negligence or carelessness of a fellow employee. He is bound to treat the employee humanely, and in case the employee leaves the employment for cause, such as inhumane treatment, subjection to perils and dangers not ordinarily incident to the employment, or the performance of labor on Sunday or extra labor under compulsion, the employer is equally bound to pay the compensation, as though he discharged the employee without cause.

The Servant's Risks.—It has just been stated that the employer is not liable if the employee is injured by the carelessness of a co-employee. That is one of the risks the employee assumes. Moreover, the employee takes all risk of dangers which are ordinarily connected with and incident to the employment. The employer is bound however to instruct the employee in the use of dangerous machinery and appliances and to point out dangers which are not obvious and known to the employee. Having done this and having employed competent fellow employees and furnished suitable and safe machinery and tools, he throws upon the employee the known risks of the employment.

Illustration.—We will suppose that you are entering the employ of a quarry-man, where a large part of the work consists in blasting with dangerous explosives. In the first place, if you are not acquainted with the nature of the business, it is the duty of the employer to instruct you regarding the work. He must point out to you the dangers incident to the business, and the proper manner of avoiding them. He must show you how to use the tools and appliances. In the second place, it is his duty to furnish you a proper equipment for the work, such as proper and suitable drills, instruments for tamping the charges, suitable and proper explosive compounds and proper fuses and appliances for exploding the blasts. In the third place, it is his duty to see that the employees whom he puts to work with you, are possessed of the requisite skill, and are reasonably competent for the business in hand. These are his chief duties. If he has performed them, and you are injured, you suffer the loss, because you assume the well known dangers

which are incident to the business, at the time you enter upon the employment. If one of your fellow employees negligently or prematurely explodes a blast, and you are injured, your employer is not liable. This rule applies to all occupations or employments, whether dangerous or harmless.

Employee's Liability.—The employee is free from liability for his acts during the employment when the circumstances are such that an agent would be free. Indeed the rules laid down governing principal and agent, apply in general to employer and employee. The employee is not generally liable upon a contract made by him on account of the employer, except he falsely represents that he is authorized to make the contract, or is otherwise guilty of fraud or deceit.

Employer's Rights Against Third Persons.—The employer being entitled to the services of the employee, has a right of action against any one injuring the employee. He can sue for an assault committed upon the employee, or for the bite of a vicious dog. In all such cases his right of action grows out of his loss of his employee's service. The employer can sue another for enticing his employee away, or for harboring his employee in case the employee has improperly quitted the service. If the employee earns anything, in service performed at a time when he should properly be attending to his employer's business, the employer is entitled to the earnings.

The Employer's Liability for the Acts of the Employee.—The employer is bound by all the acts of the employee, which are performed in the due course of the service for which the employee is hired. The extent of the employee's authority to bind the employer, is exactly measured by the scope and purpose of the employment. The employer is ordinarily liable for the wrong, deceitful, or fraudulent acts of the employee, performed in the due course of the employment. For anything done beyond the purpose of the employment and not in furtherance of it, the employee alone is liable. It is a common matter for employers to be held responsible for the negligence of their employees. By negligence is meant any neglect of the employee to do all that he ought to do in the full and faithful performance of his duty. The employee may be the most

skillful for the business that can be procured, but in case of his fault or neglect the employer is liable. Common instances of the enforcement of this rule are in suits and claims against railway corporations for injuries resulting from carelessness of employees.

QUESTIONS.

Page 109.—Who may be parties to the contract between master and servant? What is the nature of the contract? When must it be in writing? How is the compensation fixed?

Page 110.—How is the duration of the employment fixed? When may the employer discharge the employee? What are the servant's obligations? When is the employee not entitled to compensation? What are the employer's obligations toward the employee?

Page 111.—What are the servant's risks and under what circumstances does he assume them? Give the illustration.

Page 112.—What is said regarding the employee's liability? What are the employer's rights against third persons? What is the employer's liability to third persons?

HUSBAND AND WIFE.

Marriage is a contract, called the contract of marriage. The formalities attending the execution of the contract, depend largely upon the statute laws which each State has enacted regarding it. It must ordinarily be entered into in a formal manner, which is the marriage ceremony. In some States the rule is that in case persons live together, and introduce each other as husband and wife, a contract of marriage will be presumed, although there has been no formal and express agreement entered into by a marriage ceremony or otherwise.

Divorce is the annulment or dissolution of the marriage contract. It is only possible when authorized by a statute law. The grounds upon which a divorce will be granted are prescribed by statute. Divorce is either partial or absolute. In case of partial divorce, the husband and wife are merely separated, and the wife is entitled to support by the husband. Neither can contract another marriage. In case of absolute divorce, their relations are wholly dissolved, and the party for whose wrong doing the divorce is decreed, cannot marry again. The innocent party is free to contract a second marriage.

The Law of Place, which has been already discussed, is again applicable here. Marriage being a contract, if it is valid and lawful, according to the laws of the State where it is made, it is valid everywhere. It is possible, therefore, for persons who cannot contract a legal marriage in one State, to go to another State and enter into a legal marriage. This unfortunate condition of the law is likely to continue until all the States have enacted uniform marriage and divorce laws.

Duties and Liabilities of the Husband.—The husband is bound to furnish a suitable support to the wife, considering his means and her station in life. In case of his neglect to do so, she may contract for such necessaries as are proper for her, and bind her husband by the contract. She may do so while

they are living together, or, in case she has been obliged to leave her husband by reason of improper treatment, or other just cause. If a wife leave her husband without just cause, he is not liable for debts of her contracting. It is frequently customary for a husband whose wife has left him without just cause, to advertise the fact in a public way so that others may not trust her on the strength of his credit.

Rights of the Husband.—In return for his duties and liabilities concerning his wife, the husband is entitled to her services. He has a right of action for personal injuries which render her incompetent to perform service. So strict is the husband's right to the wife's services, that he cannot make a valid agreement to pay her compensation for the performance of a wife's ordinary duties. In some States the statutes have gone so far in empowering the wife to contract in her own name, that an agreement by the husband to pay a wife for services might be valid as between themselves, but rarely would it be valid as to the husband's creditors. Creditors may always insist that money paid by the husband to the wife for her services, shall be refunded, and applied toward the satisfaction of their debts.

Disabilities of the Wife.—Reference has already been made (page 9) to the wife's incompetency to contract. This disability has been removed by statute law in nearly all of the States, and very frequently a wife may now make contracts as freely as her husband. The same course of legislation has also largely freed the husband from his liability, which existed under the common law, to pay debts which his wife had contracted before marriage, and also his liability to pay damages caused by her wilful and wrongful act, such as slander or assault.

Duties of Parents to Children.—Parents are bound to protect, educate, and maintain their children. They must educate and support the children in a manner befitting the station in life in which the family move. We have already seen that in case of the failure of the parents to support the child, the latter may purchase such necessaries as are proper, and bind the parents. This does not apply if the child leaves its home without just cause.

The Rights of Parents.—The parents are entitled to the earnings of the child. Parents are also entitled to obedience from the child, and may inflict chastisement for disobedience. The law as administered in the United States, vests in the courts large discretion regarding the custody of children. It may be given either to the father or mother, in case of their disagreement. By the common law the father always had a paramount right to the custody of the children. According to the statute law of most States, children are bound to support aged and indigent parents, providing the childrens' means are sufficient. This provision is in order to prevent the burden from falling on the public at large.

Orphan Children.—By the statute law, provision has been made for the management of the persons and property of orphan children. It is accomplished by the appointment of guardians by Orphans' Courts, or other courts having jurisdiction. Guardians are sometimes appointed to manage the property of infants who are not orphans. Such appointments of guardians are usually made in case an infant becomes possessed of property before attaining majority. The infant over whom a guardian is appointed is called a ward.

Selection of Guardian.—In case it becomes necessary to appoint a guardian for an infant, the nearest relative who is proper and competent, or will be most likely to look after the interests of the ward, is selected and appointed by the court. By the statutes of some States it is provided that in case the appointment is to be made for an infant above a specified age, frequently fourteen, the infant himself may nominate the guardian of his choice, although the court is not bound to approve of such selection.

QUESTIONS.

Page 114.—What is said regarding the formalities necessary for the contract of marriage? What is divorce? What is the law of place as applied to marriage? What are the husband's liabilities?

Page 115.—What are the husband's rights? What are the parents' duties?

Page 116.—What are the parents' rights? What provision is made for orphan children? How are guardians selected?

TELEGRAPH AND TELEPHONE COMPANIES.

The Nature of the Business.—The business of maintaining and operating telegraph and telephone lines, is ordinarily in the hands of companies or corporations, and therefore the treatment of the subject is placed under that head. The business may be conducted, however, by private individuals. In such case the rules here given are equally applicable as where it is conducted by corporations. Those engaging in it, whether corporations or individuals, hold themselves out to the world as ready and willing to receive and deliver messages. They are allied to common carriers and are sometimes, although erroneously, called such. Their liability to receive and deliver all messages offered, is somewhat similar to the liability of a common carrier to receive and carry goods. They may plead war, pestilence, flood, or act of God, as an excuse for refusing to receive messages, or for delay in delivery. In case of telephone lines, this obligation to receive applies only to instances in which transmitters and receivers, or the telephones, are under the control, and in the custody of the company. The company is under no liability to a subscriber who rents a telephone, excepting such as it agrees to assume in the contract of renting. This agreement is usually nothing more than to keep the line in reasonable working order and connect one subscriber with another, whenever demanded.

The Contract Undertaken.—The contract which a company engaged in this business enters into, is with any person from whom it receives a message to be delivered for a compensation. The contract is not ordinarily expressed. If you take a message to the company's office, and hand it over to the person in charge, and it is received, although not a word should be said, a well defined contract is made. It is that the company will deliver that message to the person to whom it is addressed

with reasonable diligence and will deliver it correctly. The compensation may be demanded in advance, or the company may consent to collect it of the person to whom the message is to be delivered. The compensation if not fixed by agreement or by statute law must be a reasonable compensation. In many States the amount which companies can charge for delivering messages is fixed by statutes.

Liability of the Company.—The company is liable for any error in the transmission of the message, such as the substitution of a wrong word, or the omission or misspelling of a word. For instance, if you telegraph a Chicago merchant to "ship two car loads of wheat immediately," the nature of the message is enough to indicate to the company that it is important that the message should be delivered without delay. If there is an unreasonable delay in the delivery of the message, or if the message when delivered reads "one car load" instead of "two", and before the correct information is finally received by the Chicago merchant, the price of wheat has advanced, you have a right of action for your loss. The amount which a company is liable to pay for mistake or omission is limited to the actual damage received by the sender of the message, or the person to whom it is to be delivered.

To Whom the Company is Liable.—We have seen by the illustration in the last paragraph, that the liability of the company can be enforced by the person who sends the message. It may also be enforced by the person to whom the message is addressed. The person to whom it is to be delivered has a right of action for mistake in transmission, or for delay or failure to deliver, in all cases where he suffers special damages.

Other Instances of Liability.—The company's liability extends not only to errors in the wording of the message itself, but also to a failure to deliver it within a reasonable time, and without unreasonable delay. Likewise it is liable for a delivery to a wrong person. Moreover, the business is presumed to be conducted in a confidential manner, and the contents of messages must not be revealed. If servants or employees do reveal the nature of messages, and injury results to either the sender or the person to whom they are to be delivered, the company is liable.

Limitations of Liability.—A telegraph or telephone company does not insure the delivery of a message just as a common carrier insures the delivery of goods. Its liability arises only in case of its negligence or the negligence of its employees. It may limit and restrict its liability by any reasonable rules and regulations which it may adopt. It has a right to stipulate with any customer, for instance, that it shall not be liable for mistakes or delays in case of unrepeated messages, except for the actual amount paid for the transmission. Message blanks have usually printed upon them certain stipulations limiting the responsibility of the company. The sender who uses one of these blanks will ordinarily be bound by the printed conditions and stipulations, especially if he has been in the habit of using them, and has previously noticed the printed matter. But it is held that the usual provisions printed on the blanks limiting the liability of the company, do not apply, and will not be binding in case of error arising from gross negligence.

QUESTIONS.

Page 117.—What is the business undertaken by telegraph and telephone companies? Is there any excuse for refusing to receive messages? What is the contract undertaken? How is the compensation fixed?

Page 118.—What is the company's liability? Give an illustration. To whom is the company liable?

Page 119.—What are the limitations of the liability?

PATENTS, COPYRIGHTS AND TRADE-MARKS.

Patents.—Patents are documents issued by the United States, through the Patent Office, signed and sealed by the Commissioner of Patents. Their effect is to give to the person to whom they are issued, the exclusive ownership, use and control of the invention described in the document. The invention is said to be patented.

What is Patentable.—Several conditions must exist to entitle an applicant to a patent. The inventor must have discovered something new and useful in art, machinery, manufacture, or composition of matter, or some new and useful improvement thereof. The invention or discovery for which the patent is claimed, cannot be anything known or used by others in this country. It cannot be anything described in any printed publication, in this or any foreign country, prior to the inventor's discovery; it cannot be anything which has been in public use, or on sale for more than two years prior to the application, unless the discovery has been abandoned.

Copyrights.—They differ from patents because they apply only to something a person has written or drawn. The principal is the same, in that the copyright gives to a person the exclusive right to make copies of what he has written or drawn, just as a patent gives to the inventor the exclusive right to manufacture and use what he has invented. Copyrights are granted by the United States upon proper application as in the case of patents.

Trade Marks.—The term is frequently used in two senses. It may be used in a sense as referring to a sign or device, which manufacturers of an article stamp upon their goods and labels, in order to give the goods a distinctive feature. In the second place it may also refer to the exclusive right which the manufacturers have to use that sign or device. In the latter sense a trade mark is the right which the United States grants to

manufacturers or dealers in any article of commerce, to the exclusive use of some particular design or device upon their goods and manufactures. In the former sense it is the design or device itself.

How Obtained.—Patents are obtained by application to the Commissioner of Patents, at the Patent Office in Washington. The application is accompanied by a formula of priority of invention, and a model or drawing of the invention. Copyrights are obtained by simply filing copies of the literary work or drawing in the office of the Librarian of Congress. There is but little formality required. Before publication the author must deposit a printed copy of the title of his work with the Librarian of Congress at Washington. In case it is a drawing or engraving, a description must be deposited. The title page of a literary work is usually deposited. After publication two copies of the completed work must be deposited. A trade mark, or more particularly the right to use it, is obtained by registering the device or design at the Patent Office.

Their Object.—The purpose for which the government grants these rights is to encourage discovery, manufacture, and literary activity, by protecting the inventor, manufacturer or author in the use of the product of his brain. He alone has the right to reproduce the thing, and it therefore assumes a commercial value.

To Whom Granted.—Patents and trademarks may be granted to citizens of foreign countries, as well as to citizens of the United States, and in most foreign countries, citizens of the United States may apply for patents. Copyrights are not so free. Efforts have been made to induce Congress to pass an International Copyright Law, whereby the citizens of all nations may protect the work of their brain, and a statute in furtherance of those efforts has been enacted, although it does not make copyrights as free as authors desire.

Their Duration.—A patent runs for seventeen years, except that a patent for a design is confined to the term of fourteen years. The original term of copyright is twenty-eight years, with the privilege of renewing for a further term of fourteen years, making forty-two years in all.

Transfer of the Right.—The purpose of patents and copyrights being to encourage authors and inventors by giving to their products a commercial value, it naturally follows that the law provides a method for the sale of the patent or copyright itself. The author is not restricted to the sale of copies of the articles protected. The transfer of the patent or copyright is made by written assignment, and in case of the sale of a patent the assignment, or bill of sale, as it might be called, is filed in the Patent Office.

Infringement, is the violation of the exclusive rights of the patentee, author, or owner of a trade mark. These persons having the exclusive right to make and sell copies of the thing protected, or the exclusive right to use the trade mark; any one who makes, uses or sells the thing protected, is guilty of infringement, and may be sued for infringement. It will be seen that the person who uses the protected article without right is as guilty as the person who makes or sells it.

Validity.—A patent, copyright, or trade mark may be granted by the government and yet not be valid. The government officers or examiners, for instance, might not discover the fact that the article had been published or in common use prior to the application, and therefore not entitled to protection. If the fact is not discovered, the patent, copyright or trademark may be issued and it will remain valid until its validity is attacked, and it is proved to be invalid. Any one sued for infringement may show as a defense, that the thing was not originally entitled to protection; in case of a patent that it was not new or patentable; in case of a copyright that it had been previously published, and was not the work of the author's brain.

Protection Marks.—The law requires that an article protected by patent, copyright or trade mark shall bear a stamp upon it,—words indicating the fact. In order to claim the rights under the patent, every article before it is sold, must be marked "patented." Books and prints must be marked "copyrighted," while the words "trade mark" are placed upon a device used for that purpose. In case of a patent, the law authorizes the use and sale of the article before the patent has

been actually issued, providing an application for the patent has been made. In case the article is put on sale before the patent has been issued it must be marked, "patent applied for." The statutes of the United States impose a penalty for using these words without authority.

QUESTIONS.

Page 120.—What are patents ? When is an invention patentable ? What are copyrights ? What are trade marks ?

Page 121.—How are patents obtained ? How are copyrights obtained ? What is the object of them ? To whom are they granted ? What is their duration ?

Page 122.—How may the rights be transferred ? What is an infringement ? What is said about the validity of patents, copyrights and trade marks ? What are protection marks ?

LANDED PROPERTY.

Distinguished from Personal Property.—Referring back to the definition of personal property, (page 55), we see that it includes all moveable things which the owner may take with him from place to place. Landed property, or as it is more frequently called, real estate or real property, is immoveable. It is incapable of being transferred by the owner from the place of its location. It includes everything which is attached to the earth. It may be attached to the earth naturally, like trees or water upon the surface, or oil, coal and minerals beneath the surface. It may be attached to the earth artificially by the hand of man, as houses, walls or other structures. The owner of a piece of land owns everything on it, everything in the sky above it, and everything beneath it. He is said to own indefinitely upwards and downwards to the center of the earth.

Interest in Real Property.—There are several interests which a man may have in real property: (1) He may be the absolute owner. In such case he is called the owner of the fee, or an owner in fee simple. He may will it to anyone, and if he owns it at the time of his death, and leaves no will, his heirs will be entitled to it. (2) He may be the owner for life; he is then called a life tenant, and is said to possess a life estate. He cannot give an absolute and perpetual title to it by deed as in case of an owner of the fee. He can sell the use of it during his life time. At his death his interest as well as the interest of anyone to whom he may sell, ceases. (3) A man may own a contingent interest in real property. The person who will be entitled to property at the death of another person who has a life interest, is said to have a contingent interest or estate in it. He may sell and convey such interest, but the sale does not take effect so as to give possession, until the death of the tenant for life. (4) A man may have an interest in real property by way of easement, as it is called. If he has a right of way over another man's land, or a right to use another man's land

for any purpose, he has an easement. (5) A man may have an interest in real property by lease. He is then called a tenant for years. His interest expires at the termination of his lease.

Widow's Dower, is the interest of a wife in her husband's real property. That interest attaches to any real property which the husband owns at the time of the marriage, or which he may acquire at any time during the marriage. The wife cannot lose that interest in any way except by her own act of signing a deed. The husband cannot cut her interest off by will. At his death she is entitled to the use of one-third of all such real property. A popular misapprehension sometimes exists in regard to a wife's "third." It is frequently understood that the widow has an absolute title to her one-third, whereas she has only the use of it during her life time. At her death it descends to her husband's heirs.

A Widower's Interest, in real property left by his wife is greater than a widow's interest. He is entitled to the use, during his life time, of all the real estate which she owns at the time of her death. He is not entitled to any interest whatever unless a living child was born of the marriage. It is immaterial whether any children are living at the time of the wife's death. At the death of the widower the property descends to the wife's heirs. A number of the States have enacted statutes entirely abolishing the widower's interest in his deceased wife's property, and likewise some States have enacted statutes enlarging or diminishing the widow's right of dower.

Acquisition of Real Property.—There are two ways by which a man may acquire title to real property. The chief and most important way is by deed, or as it is sometimes called, by grant. The other way is by long continued use and occupation, or as it is called in law, by "prescription." A man's interest in real estate is frequently referred to as his title, and it is said that title to real estate is acquired in the two ways just mentioned. In case title is acquired by prescription, the law presumes that a deed was once given, and therefore the law books usually say that title to real estate can only be acquired by deed. It is better for our purposes, however, to consider the acquisition of title under the two heads of prescription and deed.

TITLE BY PRESCRIPTION.

Distinguished From Title by Deed.—Title by prescription, or use and occupation, is not so common as title by deed. As a method of acquiring an individual ownership in land, it is perhaps earlier than the method of acquiring land by deed. Long before men knew how to read and write, individuals were wont to take possession of a patch of soil, enclose it and cultivate it, and thus acquire a right to keep others off. For this reason it may be best to discuss title by prescription before title by deed. In case of title by deed, the man who claims to own real property has a deed or other writing to prove his title. It is a "paper title." In case of title by use and occupation the owner has no paper to show as evidence of his title.

How Acquired.—Title by prescription is acquired by the uninterrupted, undisputed and peaceable possession and occupation of real estate for twenty years. That is the period fixed by the statutes of nearly all the States. In a very few instances the period is longer or shorter by a year or two.

Popular Fallacies.—It is a matter of common knowledge that a man acquires an ownership in land by twenty years possession. Laymen, however, frequently misunderstand the conditions attending the acquisition of title to land in this way. In order to ripen into a title we have seen that this possession and occupation must be, (1) uninterrupted. It must be continuous, without break for the twenty years. (2) It must be undisputed and peaceable, that is, a man's possession and occupation of the property must be without protest or objection of others who claim title. (3) It follows that the possession must be with the assent and knowledge of all the persons who may have rights in the property. (4) It must be open and visible and well known to others.

Illustration.—As the question of title by use and occupation frequently arises in regard to line fences, we will take a case of that kind for an illustration. We will suppose that the line fence between your land and your neighbor's land has been standing for twenty years or more, and therefore you claim to own all of the land on your side of the fence. Your neighbor claims that the fence is not on the line but encloses some of his

land which is not included in your deed. In order to make good your right to the land, you must show that the fence has stood there continuously for twenty years or more; that you have used and occupied all the land up to the fence; that you have done so with your neighbor's knowledge and without protest or objection on his part, and that he knew during these years what his rights were, and did nothing to dispossess you. In other words, in order to lose his rights, he must have known what they were, and "slept on them," as the law says. If he has objected, or protested, or disputed your right to possession, by taking any active measures to enforce his own claims, he does not forfeit them, and you do not acquire title by use and occupation. It is seen, therefore, that title is not acquired by prescription, in the direct, broad and easy manner which people frequently suppose.

Easements, are interests in land, rather than ownership of the land itself.

Instances of Easements, are: (1) Right of way. This is a right which the owner of one piece of land may have to pass over the land of another. It is in the nature of a lane or private road. It may be the right to pass over another man's land at a certain place, or it may be a right to pass over it at any place. It may be authorized in order to reach a highway, a well or spring, or another piece of land belonging to the owner of the right of way. (2) A right to draw water by pipe or conduit from a spring or well on another man's land. (3) A right to divert the water of a flowing stream or brook. (4) A right to overflow a stream or brook by building a dam. Easements are acquired both by deed and by prescription. They are very frequently acquired by prescription.

TITLE BY DEED.

A Deed is a contract in writing conveying real estate. It is one of the most solemn forms of contract. It is not merely a promise to convey land, it is the conveyance itself. It not only conveys the land, but it is also the evidence of the owner's title. It is absolutely necessary for a conveyance of land, while

a bill of sale is not a necessity in a sale of personal property, because personal property is capable of manual delivery.

The Parties.—There may be any number of parties to a deed. There must be at least one seller and one purchaser. The seller is usually referred to as the first party, and is called the grantor. There may be any number of grantors. The purchaser is referred to as the second party, and is called the grantee. There may also be any number of grantees. The grantors must always be parties competent to contract. Grantees may be incompetent persons, that is to say, land may be deeded to an infant or a lunatic, and the grantee will get good title to it. The infant or lunatic, however, not being able to give a deed or sell land, there must be some method by which it can be conveyed, and therefore the power to convey it, is vested in the courts. In case it is desired to sell real estate owned by an incompetent person, a petition is presented to the proper court, and, if it appears to the court that the interests of the incompetent person will be promoted by a sale, the court will appoint a suitable person, usually called a special guardian, to make the sale, and will empower the guardian to sign a deed in the name of the infant, idiot or lunatic.

Form of Deeds.—In the United States it is seldom that a deed is required to be in any particular form of words, although deeds must ordinarily be executed in a formal manner. They must always contain the requisites or elements of a deed.

The Requisites of a Deed Are : (1) Names of the parties; (2) the consideration ; (3) words of conveyance ; (4) description of the property : (5) words denoting that the grantee is to have it.

Usual Form.—We have seen that no precise form is necessary, so long as the requisites just mentioned are present. The statutes of several States even do away with the necessity of some of these requisites. The names of the parties should be inserted in full. The consideration should be expressed in words and also in figures. The words of conveyance usually employed are "grant and convey;" the description should be accurate, and should definitely locate the property by stating the name of the town, county and State, and boundaries, or

reference to maps, so that a stranger by reading the deed could find the property. The fifth requisite mentioned is sometimes omitted. The words "to have and to hold unto second party, his heirs or assigns forever," are usually employed. It is called the "habendum clause."

Covenants.—This term is usually applicable to any other words or recitals contained in the deed in addition to the requisites which have been mentioned. Covenants are additional promises or agreements on the part of either the grantor or the grantee, or both. They usually limit or restrict the conveyance, the title, or the use which may be made of the land. If the deed recites that the premises are "free of incumbrances," it is a covenant on the part of the grantor that there are no incumbrances. If the deed recites that no malt or spirituous liquor shall be kept or sold for profit on the premises, it is a covenant on the part of the grantee that the land shall not be used for such purposes. Covenants may be either personal or they may run with the land. Personal covenants bind simply the parties to the deed. They are avoided by another sale of the land or the death of the party bound. Covenants running with the land, are binding forever. They bind the parties and also all persons who may ever afterwards own the land.

Kinds of Deeds.—Deeds are usually classified as: (1) Warranty deeds; (2) warranty deeds with full covenant; (3) quit claim deeds; and (4) deeds with covenant against grantor. The first kind, or the ordinary warranty deed, is the most common form in use. In an ordinary warranty deed the grantor warrants the title as against any one lawfully claiming the same. It becomes a full covenant deed by adding the further covenant that the grantor has a good and clear title to the premises. In some localities it is quite the custom for grantors to give full covenant deeds. In other localities they are given only in case the grantee has doubts about the perfectness of the title, or demands it for other reasons of safety. Quit claim deeds are usually given in cases where the grantor has not a perfect title, or does not wish to vouch for or warrant it.

Effect of an Ordinary Warranty Deed.—We have seen that a warranty is not a necessary requisite of a deed. The

deed is valid without it. It is an additional recital, and is a covenant. It is a covenant of title, and it is important for every person who owns, or expects to own real estate, to understand the difference between an ordinary warranty deed and a full covenant deed. In an ordinary warranty deed the covenant is usually in this form: "And the party of the first part covenants and agrees to and with the party of the second part, that the premises thus conveyed, in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, he will forever warrant and defend against any person whomsoever lawfully claiming the same, or any part thereof." These words are usually inserted at the end of the deed following the description of the property. The deed in which they are used is a warranty deed, because the grantor or seller warrants the title to be good, in so far that he will defend it against any one making a lawful claim to the property. But just here there is a prevalent misunderstanding. The grantor is not liable upon his warranty and he cannot be held accountable for any defects in the title which afterward appear, until the grantee has been dispossessed of the premises by some one having a better title. Real estate owners frequently suppose, that because they have a warranty deed, the man who gave it is bound to defend them against other claimants to the property, or of any interest in it. The illustration which will follow will more clearly point out the distinction.

Ordinary Form of Warranty Deed.—Following is an ordinary form of warranty deed:

WARRANTY DEED.

This Indenture, *made this first day of June, in the year of our Lord one thousand eight hundred and ninety-one,* **Between** *David H. Evans of the City of Rochester and State of New York, unmarried, of the first part, and Moses F. Hamm of the same place, of the second part,* **Witnesseth,** *That the said party of the first part, in consideration of the sum of Six Thousand Dollars to him duly paid at or before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, his heirs and assigns forever,* **All** *that tract or parcel*

of land situate in the City of Rochester, County of Monroe and State of New York, known and described as lot number ten (10) in the Magnolia tract, reference being had to a map of said tract on file in Monroe County clerk's office, with the appurtenances, and all the estate, right, title and interest of the said party of the first part therein. **And** *the said party of the first part, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that he will* **Warrant** *and* **Defend** *the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever, against any person whomsoever lawfully claiming the same or any part thereof.*

In Witness Whereof, *the said party of the first part, has hereunto set his hand and seal the day and year first above written.*

DAVID H. EVANS (Seal).

Sealed and delivered in the presence of

C. P. VARY,
BRACKETT H. CLARK.

State of New York,
COUNTY OF MONROE, } *ss.*
City of Rochester.

On the first day of June, in the year one thousand eight hundred and ninety-one, before me personally came David H. Evans, to me personally known to be the individual described in, and who executed the foregoing instruwent, and he acknowledged that he executed the same.

JOHN F. KINNEY,
Notary Public.

If the grantor Evans were married, his wife's name would be inserted as one of the first parties and she would sign and acknowledge the deed.

Effect of a Full Covenant Deed.—The full covenant deed contains not only the covenant or warranty referred to in the last paragraph, but also a further covenant in words something like this: "The said first party covenants and agrees to and with the second party, his heirs and assigns, that, at the time

of the ensealing and delivery of these presents, he is the lawful owner, and is well seized of the premises above conveyed, free and clear from all incumbrances." These words are usually inserted in the same part of the deed, and connected with the covenant of the ordinary warranty deed. No precise form of words is necessary, so long as the words express the intention of the grantor to make a covenant, that he has a good title to the premises, and that they are free from incumbrances. The effect is that if his title is not good, but is in any way defective, or if any other person has any interest, any right, claim or incumbrance upon the premises, he can be held accountable as soon as he delivers the deed. The grantee need not wait until he has been put off the property at the end of a law suit.

Illustration.—We will suppose that you have purchased a piece of land, and after the deed has been executed and delivered to you, the owner of the adjoining property lays claim to a portion of it, on the ground that the division fence is not on the boundary line. If your deed is an ordinary warranty deed you cannot go to the man from whom you purchased, and say, "You did not give me a good title to all the property. My neighbor claims a part of it and has commenced a suit to recover what he claims. You must defend this suit for me, because you have given me a warranty deed." He is not bound to defend the suit, or to protect you against the claim of the neighbor. There is no obligation resting upon him to do anything for you until the neighbor has lawfully recovered possession of the property claimed, by due legal proceedings, or by some process which the law recognizes as valid, On the other hand, if your grantor has given you a full covenant warranty deed he is bound to defend you and protect you against all claims, or pay you damages immediately upon delivery of the deed, or whenever it is discovered that any other person has any claim upon the land or any part of it. You need not wait to sue him until such other person has succeeded in his claim. This rule applies to all cases of defective title ; to a claim of ownership of a part of the land ; to a claim of dower right, or an undivided interest in it, or to a claim of lien or incumbrance upon it, providing the claim is a lawful one.

Effect of Quit Claim Deeds.—The quit claim deed contains no covenant of title whatever. It has simply the bare requisites of a deed. The grantor does not even represent that he has any title. It conveys the land subject to all defects in title or incumbrances. It has been said that the quit claim deed is in common use in cases where the grantor does not wish to vouch for his title. It is also used as between heirs to property, in conveying to each other or to third persons, their respective interests. It is also used where the grantor has no real or actual interest in the property, but the grantee requires the deed in order to perfect his title, as in case of a former deed which has been lost before being recorded.

Form of Quit Claim Deed.—Following is an ordinary form of a quit claim deed:

QUIT CLAIM DEED.

This Indenture,

Made this First day of June, in the year of our Lord one thousand eight hundred and ninety-one, **Between** *Elijah D. Webster and Ellen M., his wife, of the City and County of New York of the first part and George F. Yeoman of the same place of the second part,* **Witnesseth,** *That the said parties of the first part, in consideration of the sum of One Dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have bargained, sold, remised and* **Quitclaimed,** *and* **By these Presents** *do bargain, sell, remise and Quitclaim unto the said party of the second part and to his heirs and assigns forever,* **All that Tract or Parcel of Land** *situate in the City and County of New York, and State of New York, known and described as the west half of lot nine (9) in section A of Harlem Heights, so called, being eighteen feet front on the northerly side of 160th street and running back of the same width 100 feet, Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the*

first part, either in law or equity, of, in and to the above bargained premises, with the said hereditaments and appurtenances, **To Have and to Hold** *the said described lands to the said party of the second part, his heirs and assigns, to the sole and only proper benefit and behoof of the said party of the second part, his heirs and assigns forever.*

In Witness whereof, *the said parties of the first part to these presents have hereunto set their hands and seals the day and year first above written.*

In the presence of
HARRY K. ELSTON,
JAMES VICK.

ELIJAH D. WEBSTER. [SEAL.]
ELLEN M. WEBSTER. [SEAL.]

State of New York,
CITY AND COUNTY OF NEW YORK. } *ss.*

On this first day of June, in the year Eighteen hundred and ninety one, before me, the subscriber, personally appeared at said City of New York, Elijah D. Webster and Ellen M., his wife, of the City and County of New York, State of New York, to me personally known to be the same persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

JOHN D. LYNN,
Notary Public.

Effect of Covenant Against Grantor.—This is the fourth kind specified in the division of deeds. It is better than a quit claim deed and yet does not contain a general covenant of title as in case of warranty deeds. It contains a covenant on the part of the grantor that he has not himself done, or permitted anything to be done injuriously affecting the title. By inserting it he represents that the title is good so far as anything he has done is concerned.

Execution of Deeds.—The execution of a deed is the act of signing it by the grantor or grantors. In many States the execution must be in the presence of, and must be signed by, two witnesses. Whether witnesses are required or not, their presence and signatures can do no harm. In all cases there

must be seals opposite the signatures of the grantors. In many States a scroll made with the pen will answer for a seal. The grantee need not sign the deed. By accepting it and paying the consideration he becomes bound by it. If there are covenants and agreements in it, which are to be kept or performed by him, the acceptance of the deed obligates him to keep and perform them.

Delivery of Deeds.—A deed may be dated and executed a long time prior to its delivery. Until delivered it has no force or effect. Courts are frequently called upon to decide what constitutes a delivery, and to say when a deed has been delivered. A deed may be delivered to the grantee himself, or to his agent. It may be delivered by the grantor or by his agent. Moreover, it may be in the hands of the grantee or his agent for some time and yet not be delivered, because not accepted, or because the consideration has not been paid. The delivery is governed by the intention of the parties. There can be no delivery until the grantor or his duly authorized agent has passed it over with the intention that it shall take effect, beyond recall, and it is accepted with like intent.

Delivery in Escrow, is the delivery of a deed to a third person, with instructions and power to deliver it to the grantee when some act has been performed or event taken place. The grantor cannot recall the deed from the third person, nor is the grantee entitled to it until the conditions under which it is held by the third person have been complied with.

Proof or Acknowledgment of Deeds.—A deed is binding upon the person who signs it as soon as it is executed and delivered. An acknowledgment of it is not necessary to its validity. Acknowledgment is only necessary in order to entitle it to be recorded in the public office where deeds are recorded. An acknowledgment is the formal admission by the grantor before an officer empowered to take acknowledgments, to the effect that the grantor executed it, and that it is his deed. Acknowledgments are usually made before a justice of the peace, notary public, or commissioner of deeds. In some States the officer taking the acknowledgment is obliged to examine the grantor's wife separately from the husband, in order to ascertain whether

she executed the deed of her own free will. In some States a deed may be "proved" by the affidavit of a witness who saw it signed, so as to entitle it to record.

Recording of Deeds.—The practice of recording deeds or other real estate conveyances is of comparatively modern origin. It is wholly regulated by statutes. Such statutes are frequently referred to as the recording acts. A deed is not invalid because not recorded, unless the statute says it must be recorded. The statutes are usually permissive. They allow the holders to record their deeds if desired. As between the grantor and the grantee, excepting in States where recording is required, a deed is perfectly valid whether recorded or not. The prime object of recording is to give notice to third persons of the change of title and to make the conveyance valid as to third parties. The practical advantage of recording arises in case a deed or conveyance is lost. A copy, certified by the officer with whom it is recorded is as good evidence of title as the original.

Illustration.—If you purchase a piece of property in a State where the statute does not compel you to record your deed, you may conclude not to record it, but instead file it away in a safe place. As against your grantor, your title to the land is good. If he were dishonest, however, he might sell the land again, or mortgage it, to a third person, without knowledge of your interest. If such person purchases in good faith without knowledge that you hold a deed, and should record his deed or mortgage before you record your deed, he would have a better title than you. Your grantor, it is true, might commit a crime, but he could cheat you out of your property. The better practice is to record all deeds or real estate conveyances, as soon as delivered. If the conveyance is recorded all persons are presumed to know of it.

Abstracts of Title, or "searches" as they are frequently called, are written documents showing the conveyances which have been made of a piece of land, during a specified period. They show also what, if any, incumbrances there are on the property by way of mortgage, judgment, or otherwise. If there is a deed which some careless owner has failed to record,

there is said to be a break in the chain of title, and the abstract will show that also, as well as any defects arising from the failure of persons having an interest in the property to execute deeds. Abstracts of title are made either by the public officer having charge of the office in which deeds are recorded, or by title abstract, or title insurance companies. The compensation is frequently fixed by statute. In these days it is quite customary for the purchaser of property to demand an abstract of title and for the purchaser to give it.

MORTGAGES.

Their Nature.—A mortgage is a conveyance of land to a creditor as security for the payment of a debt. Upon the payment of the debt, the conveyance becomes void. It is the pledging of land for the payment of a debt. The debtor, or person who gives the mortgage, is called the mortgagor. The creditor, or person to whom the mortgage is given, is called the mortgagee. What has been said regarding the parties to a deed is equally true as to the parties to a mortgage.

The Defeasance.—An ordinary mortgage is in the form of an ordinary deed. It contains the usual requisites of a deed. It appears on its face to be an absolute conveyance of the property, with the exception that it contains a clause stating the terms of payment and a defeasance. It is called the defeasance clause. It is a recital that the conveyance shall be void, if the money, for the payment of which the mortgage is given, is paid according to the terms specified. It is sometimes provided by statute that a conveyance intended to operate as a mortgage, shall be void unless the defeasance clause is incorporated in the mortgage or recorded with it. This is intended to reach grasping creditors, who demand a deed of property as security for a debt, thereby vesting the title in them, and perhaps making it difficult for the debtor to secure restitution. The courts however hold that a conveyance given as a security, is a mortgage even though it appears on its face to be an absolute deed.

Power of Sale and Redemption.—Mortgages usually contain a clause empowering the mortgagee to sell the property according to law, and out of the proceeds to pay the debt and

costs. At any time before the sale the grantor or his representatives, have the power of redeeming the property by paying the debt with interest and costs, if any. For that reason the grantor's interest in land on which he has given a mortgage, is called the equity of redemption. A sale of mortgaged property to satisfy a mortgage must be conducted according to the statutes which are provided for such cases. It is called the foreclosure of the mortgage. In some States the mortgagor is allowed by statute a specified time after a sale in which to redeem. In other States a sale cuts off his interest entirely.

Execution and Delivery.—What has been said relative to the execution and delivery of deeds applies to the execution and delivery of mortgages. The rules relating to the acknowledgment and recording of deeds are also applicable to the acknowledgment and recording of mortgages.

Usual Form of a Mortgage.—The following is an ordinary form of a mortgage:

MORTGAGE.

This Indenture,

Made this First day of June, in the year of our Lord one thousand eight hundred and ninety-one, **Between** *Martin Hunkley and Kittie Hunkley, his wife, of the City and County of New York, of the first part, and Halton Davis, of the Town of Brighton, N. Y., of the second part,* **Witnesseth,** *That the said parties of the first part, in consideration of the sum of One Thousand Dollars ($1000), part purchase price of the premises hereinafter described, to them duly paid, the receipt whereof is hereby acknowledged have sold, and* **By these Presents,** *do grant and convey to the said party of the second part, his heirs and assigns,* **All that Tract or Parcel of Land,** *situate in the Town of Brighton, County of Monroe and State of New York, and being part of Town lot 35, bounded southerly by Highland Avenue, easterly and westerly by the easterly and westerly lines of said lot 35, and northerly by a line parallel with Highland Avenue, and so far distant northerly as to contain three acres of land.* **This Grant** *is intended as a security for the payment of the sum of One Thousand Dollars of principal, payable $100 on the first*

day of January next, and $50 quarterly thereafter until said principal is fully paid with interest from the date hereof at the rate of six per cent. per annum, payable semi-annually on all sums remaining unpaid at the times of payment, according to the conditions of a **Bond** *this day executed and delivered by the said Martin Hunkley to the said party of the second part. And in case default shall be made in the payment of the principal sum hereby intended to be secured, or in the payment of the interest thereon, or any part of such principal or interest, as above provided, or of the taxes, assessments or insurance hereinafter mentioned, it shall be lawful for the party of the second part, his executors, administrators, or assigns, at any time thereafter, to sell the premises hereby granted, or any part thereof, in the manner prescribed by law, and out of all moneys arising from such sale, to retain the amount then due for principal, interest, taxes, assessments, or insurance, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said Martin Hunkley, his heirs and assigns. And this conveyance shall be void if full payment of the aforesaid moneys, both principal and interest, be made as hereinbefore specified, and if the aforesaid covenants and each of them be well and truly kept and performed as hereinbefore specified and provided.*

In Witness Whereof, *The parties of the first part, have hereunto set their hands and seals the day and year first above written.*

Sealed and delivered in the presence of

GEO. C. JONES,
S. R. MCNALL.

MARTIN HUNKLEY. [SEAL.]
KITTIE HUNKLEY. [SEAL.]

State of New York,
CITY AND COUNTY OF NEW YORK. } *ss.*

On this first day of June, in the year one thousand eight hundred and ninety-one, before me, the subscriber, personally appeared Martin Hunkley and Kittie Hunkley, his wife, to me personally known to be the same persons described in and who executed the within instrument, and they severally acknowledged that they executed the same.

GEO. C. JONES,
Notary Public.

The above mortgage is called a purchase money mortgage, because it is given to secure part of the purchase price of the land. It is not necessary for the wife to sign a purchase money mortgage, although the execution of it by her, can do no harm.

Additional Clauses.—We have seen that the requisites of a mortgage are substantially the same as those of a deed, excepting as to the defeasance and power of sale clauses, and the statement of the terms of payment. There are three additional clauses which are sometimes inserted, however: (1) The interest clause, (2) the insurance clause, and (3) the tax clause. (1) The interest clause provides that if the interest is not paid when due, the entire mortgage debt shall become due, although by the terms specified in the mortgage the principal might not become due until long afterwards. (2) The insurance clause provides that the mortgagor shall keep the property insured and assign the insurance policy to the mortgagee, and if he fails to do this the mortgagee may effect the insurance and add the premium paid to the amount of the mortgage. (3) The tax clause provides that the mortgagor shall pay the taxes promptly, and if he fails to do so, the mortgagee may pay them, and add the sums paid to the amount secured by the mortgage.

Bonds or Notes.—It is customary for the grantor at the time of executing the mortgage to execute either a bond or a note of the same amount, to go with the mortgage. The bond or note represents the debt, and strictly speaking, the mortgage is given to secure the payment of the bond or note. The mortgagee may sue on the bond or note to collect his debt, or he may elect to foreclose the mortgage against the land. A bond, following an ancient form, is always made for twice the amount of the debt. That is called the penal sum or penalty.

Form of the Bond.—Following is the form of the bond going with the above mortgage:

BOND.

Know all Men by these Presents:

That we, Martin Hunkley and Kittie Hunkley, of the City of New York, are held and firmly bound unto Halton Davis of the Town of Brighton, N. Y., in the sum of Two Thousand Dollars,

to be paid to the said Davis or to his certain attorney, executors, administrators or assigns, **For which Payment** *well and truly to be made we bind ourselves and our heirs, executors or administrators, jointly and severally, firmly by these presents.*

Sealed *with our seals and dated the first day of June in the year of our Lord one thousand eight hundred and ninety-one.*

The Condition of this Obligation is Such, *That if the above bounden Martin Hunkley and Kittie Hunkley, their heirs, executors and administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above mentioned Halton Davis, his certain attorney, executors, administrators or assigns, the just and full sum of One Thousand Dollars of principal as follows: $100 on the first day of January next and $50 quarterly thereafter until said principal is fully paid, with interest from the date hereof at the rate of six per cent per annum, payable semi-annually, on all sums remaining unpaid at the time of payment, then this obligation to be void, otherwise to remain in full force and virtue.*

In Witness Whereof, *The parties of the first part have hereunto set their hands and seals the day and year first above written.*

MARTIN HUNKLEY (Seal).
KITTIE HUNKLEY (Seal).

Sealed and delivered in the presence of
GEO. C. JONES,
S. R. MCNALL.

State of New York,
CITY AND COUNTY OF NEW YORK. } *ss.*

On this first day of June, in the year one thousand eight hundred and ninety-one, before me, the subscriber, personally appeared Martin Hunkley and Kittie Hunkley, to me personally known to be the same persons described in and who executed the foregoing instrument and they severally acknowledged that they executed the same.

GEORGE C. JONES,
Notary Public.

Assignment of Mortgages.—Mortgages are personal property. Their sale may be effected by a manual delivery by the seller to the purchaser. An actual delivery of possession will

vest the ownership in the purchaser. In order, however, that the purchaser may get a record title to a mortgage, there must be a written assignment, executed, acknowledged and delivered, with the same formality as the mortgage itself. The purchaser may then record his assignment, and thus give notice to all persons of his rights.

Priority of Mortgages.—The owner of land may give any number of mortgages upon it. Their priority, or the order in which they are a lien upon the land, and in which they may be enforced, depends upon the time they are recorded relative to each other. A mortgage first recorded in point of time is a first mortgage. A mortgage next recorded is a second mortgage, and so on. It is important, therefore, for a mortgagee to record his mortgage immediately upon its delivery to him. The owner of the land may execute another mortgage, without committing a wrong, which may become the first mortgage by being first recorded, although not executed and delivered until after the other.

Discharge of Mortgages.—When a mortgage is paid it may be delivered up to the mortgagor together with the bond or note accompanying it, and it is thenceforth void. But the act of surrendering it, will not discharge it on the record, provided it has been recorded. It still appears to be a lien upon the land. The statutes usually provide for a certificate of discharge to be executed, acknowledged and delivered to the mortgagor by the mortgagee, or the person who is at the time the owner of it, providing it has been assigned. The owner of the mortgage thereby certifies that the mortgage has been paid and satisfied. The mortgagor may record this certificate, or discharge of mortgage, as it is usually called, and thereupon the mortgage is discharged of record.

Form of Discharge.—A discharge of the mortgage given as a form would be as follows:

DISCHARGE OF MORTGAGE.

I, Halton Davis, hereby certify that a certain mortgage given by Martin Hunkley and wife, dated June 1st, 1891, to me to secure $1000, and recorded in the office of the Register of Deeds

of the City and County of New York, in Liber, 450 of mortgages, at page 55, on the 2nd day of June, 1891, is paid, satisfied and discharged.

HALTON DAVIS (Seal).

In the presence of
GEO. C. JONES,
S. R. MCNALL.

This certificate of discharge is acknowledged the same as the mortgage.

QUESTIONS.

Page 124.—Distinguish real property from personal property? State the five kinds of interests in real property?

Page 125.—What is a dower? What is a widower's interest in property left by his wife? What are the two ways specified of acquiring title to real property?

Page 126.—Distinguish between title by deed and title by prescription? Give the illustration of the acquisition of title by perscription?

Page 127.—What are easements? Give the instances of easements? What is a deed?

Page 128.—What is said regarding the parties to a deed? What are the requisities of a deed?

Page 129.—What are covenants? Give the illustrations? How are deeds classified?

Page 130.—State the effect of an ordinary warranty deed by referring to the illustration?

Page 132.—State the effect of a full covenant deed by referring to the illustration?

Page 133.—What is the effect of a quit claim deed?

Page 134.—What is the effect of a covenant against the grantor? What is said in reference to the execution of deeds?

Page 135.—What is said in reference to the delivery of deeds? What is delivery in escrow? What is the object of acknowledgment?

Page 136.—What is the object of recording deeds? Give the illustration? What are abstracts of title?

Page 137.—What is a mortgage? What is the defeasance? What is the power of sale and redemption.

Page 140.—What additional clauses are sometimes inserted in mortgages? What accompanies the mortgage to represent the debt?

Page 141.—How may mortgages be assigned?

Page 142.—How is the priority of mortgages governed? How are mortgages discharged?

CONTRACTS FOR THE SALE OF LAND.

Agreements Preceding the Deed.—Prior to the execution and delivery of a deed of land the parties must necessarily have had some negotiations which result in its execution and delivery. They must have mutually agreed upon the purchase price, and the terms of payment. In other words the owner has agreed to sell, and the purchaser has agreed to buy for a specified consideration. It is of considerable importance to know when and under what circumstances the contract is a valid and binding contract. If it is not a valid contract, either the seller or purchaser may refuse to complete it at any time, up to the very moment of the execution and delivery of the deed, and its acceptance by the purchaser.

Must be in Writing.—The statute of frauds (page 20), requires that, "every contract for the sale of lands, or any interest in lands," must be in writing, and signed by the parties to be bound. It may be said as a general rule, therefore, that no agreement to sell or purchase land is valid unless in writing and signed. There may be a verbal agreement between the parties which meets all the requirements of an ordinary contract. The parties might be morally bound to complete it, and yet there would be no legal obligation. There must be a written contract of sale, or some note or memorandum in writing, signed by the parties to be bound. If the seller alone signs it, he can only be compelled to complete the sale. Likewise if it is signed only by the purchaser, he alone is under legal obligation to perform it.

What is a Sufficient Writing.—The contract need not be drawn up as a formal legal document. It is sufficient if the writing fairly indicates the intentions of the parties, and is precise enough to enable a court to ascertain, (1) the terms of the contract, (2) the land to be conveyed, and (3) the price to be paid for it. A correspondence by letter, if sufficiently full and precise, may amount to a contract. The whole contract,

however, including all the terms and conditions, must appear with sufficient detail as to indicate the intention of the parties without the aid of explanation.

What is an Insufficient Contract.—An informal instrument quite frequently fails to constitute a sufficient contract because of its failure to definitely locate and describe the land. A defect of that kind would be quite apt to exist in a correspondence by letters, as the writers would hardly go to the extent of stating a formal description of the land, and it is seldom that an informal reference to the land would constitute a sufficient location and description. It is a common practice for purchasers to pay the seller a part of the purchase price upon the formation of a verbal agreement without any writing. This is frequently done under the mistaken supposition that the payment of part of the purchase price binds the sale. It has no effect whatever toward binding the sale or forming a valid contract. The seller is not bound to complete the sale by executing and delivering a deed, although he may be compelled to return the money he has received. This mistaken supposition doubtless arises from the fact that in a sale of personal property a part payment of the purchase price, or "earnest money," goes to make a valid contract. Neither does the mere delivery of a receipt for money by the seller of the land, make a valid contract, unless the receipt is drawn with sufficient fullness to meet the requirements stated in the last paragraph.

Exceptions.—There are peculiar circumstances, however, under which a verbal agreement to sell land will be sustained. For instance, if the party seeking to enforce a verbal contract has fully performed it on his part, and it appears that the other party designs to perpetrate a fraud, which will be accomplished if he is not compelled to keep the contract, a court of equity will compel him to keep it. Or, if the circumstances are such that the party seeking to enforce a verbal contract would be defrauded if it were not enforced, as by his having taken possession, made improvements, and paid part of the purchase price, the contract will quite frequently be upheld.

Formal Contracts.—It is customary for the parties to a contract for the sale of land to execute a formal document

called a land contract. These contracts are intended to bind the parties while the deed is being prepared or the title approved. The arrangement may be, moreover, that considerable time is to elapse before the deed is to be delivered, and in the meantime the purchaser is to pay installments of the purchase price. The land is said to be sold on land contract. No precise form of words is necessary. An ordinary land contract would be something like this:

LAND CONTRACT.

Article of agreement, made this first day of June, 1891, between Frank P. Kelsey, of the city of Detroit, Michigan, owner, of the first part, and John A. Barhite of the same place, of the second part,

Witnesseth, *That, in consideration of the sum of five thousand dollars ($50000), to be to him duly paid, the first party hereby agrees to sell to the party of the second part, all that tract and parcel of land situated in said city and State, known and described as block ten in Kelsey's addition to the city of Detroit, reference being had to a map of the said addition, filed in the Register's office in said city, for the sum of five thousand dollars ($5000), which the second party hereby agrees to pay to the first party as follows: One hundred dollars ($100) upon the execution and delivery of this agreement, and the balance on or before the third day of September next; and the party of the first part upon receiving such payment, at the time, and in the manner above mentioned, shall, at his own proper cost and expense, execute and deliver to the party of the second part, a good and sufficient warranty deed of said premises, with official abstract of title, showing said premises free and clear of all incumbrances, and free from clouds on the title.*

It is agreed that the stipulations aforesaid, are to apply to, and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the parties have hereunto set their hands and seals, in the day, and year, first above written.

FRANK P. KELSEY (Seal).
JOHN A. BARHITE (Seal).

Other Conditions.—If the contract is to be recorded it must be witnessed, executed and acknowledged according to the laws of the State where it is to be recorded. It may also contain any other peculiar terms or conditions which the parties may agree upon. The purchaser upon receiving the contract may safely make payments upon it. If it is recorded his rights will be protected as against the seller or creditors of the seller, or as against future incumbrances. His risk lies in the fact that the seller may become bankrupt and unable to clear the incumbrances, if any, which are on the land when the contract is executed, or, for any other reason be unable to give good title.

QUESTIONS.

Page 144.—What agreements must precede a deed? What is the result if the preceding agreements are not valid? Why must they be in writing? Who must sign the writing? What is a sufficient writing?

Page 145.—What is an insufficient writing? What is the usual defect in a contract by correspondence? What is the effect of part payment of the purchase price? What is the effect of a receipt? When will a mere verbal agreement be enforced? What are formal contracts for the sale of land called?

Page 147.—What is said regarding the acknowledgment and recording of land contracts?

LANDLORD AND TENANT.

Leases, are grants of the use of real property. They convey, for the time or period for which they are given, an interest in real estate. The interest conveyed may be designated as the right to the exclusive possession of the land leased or granted for the time specified in the lease. A lease gives rise to the relations of landlord and tenant.

The Parties.—There must be at least two parties to a lease. There must be an owner who leases or rents the land, and who is called the landlord or lessor, and there must be the person to whom the land is rented, who is called the tenant or lessee. There may be any number of lessors or lessees. The landlord, or lessor, must be a party competent to contract, although the land of an incompetent person may be leased by the guardian or by an order of the court. The tenant, or lessee, must also be a person competent to contract. The tenant agrees to do something, if nothing more than to pay the rent, and therefore must be competent to make an agreement.

Formation of the Contract.—If the lease is for one year or less the contract of leasing may be made verbally. In law, a verbal contract, in cases where the contract may be made verbally, is always spoken of as a lease, although there is no writing. If a lease is for more than a year, we have seen that in compliance with the statute of frauds, it must be in writing. There must be a written lease. In some States the statutes provide that a lease need not be in writing unless it is for more than three years.

A Verbal Lease.—In case a lease is made verbally, the agreement must be sufficiently definite to express the intentions of the parties, as to the time the land is to be leased, and the rent. If the rent is not specified the tenant is bound to pay what is a reasonable sum for the use and occupation of the premises. If the parties do not expressly agree upon the time of the lease,

or the period for which it is to continue, the law will usually presume that it is a lease from year to year. The landlord cannot remove the tenant until the expiration of the year.

Leases in Writing, do not necessarily require a particular form of words. It is sufficient if they indicate the intentions of the parties. An ordinary form of lease is something like this:

LEASE.

A LEASE *made and executed June 1, 1891, between Clarence H. T. Bly, of the town of Southold, New York, of the first part, and Epher Whitaker of the same place, of the second part,* WITNESSETH*:*

In consideration of the rents and covenants herein expressed, said party of the first part has demised and leased, and does hereby demise and lease to the said party of the second part, all that tract and parcel of land situated in said town, known and described as Pine Neck and Old Orchard, consisting of about fifty (50) acres of land, more or less, in said town of Southold, in the county of Suffolk, in the State of New York, with the privileges and appurtenances, for and during the term of one year from the date herein, which term will end on the thirty-first day of May, 1892.

And the said party of the second part covenants that he will pay to the party of the first part, for the use of the said premises, the annual rent of one hundred dollars ($100), to be paid in quarterly payments of twenty-five dollars ($25) each, to be paid at the Southold Savings Bank in said town.

And, provided the said party of the second part shall fail to pay said rent, or any part thereof when it becomes due, it is agreed that the said party of the first part may sue for the same, or re-enter said premises, or resort to any legal remedy.

It is agreed that the party of the second part, in addition to said rent reserved, shall pay and discharge the taxes and assessments levied upon said premises for school or highway purposes during said term.

The party of the second part covenants that at the expiration of said term he will surrender said premises to the party of the first part in as good condition as now, necessary wear and damage by the elements excepted.

Witness the hands and seals of the said parties in duplicate, the day and year first above written.

CLARENCE H. T. BLY (Seal).
EPHER WHITAKER (Seal).

Kinds of Tenants.—The word tenant is derived from a Latin word *tenere*, meaning "to hold;" and tenants are divided into several classes according to the power or authority under which they hold or possess the property. They are (1) Tenants by sufferance; (2) Tenants at will; (3) Tenants from year to year; (4) Tenants for years, and (5) Tenants for life. The holding of a tenant, having reference to its manner and authority, is called the tenancy.

Tenants by Sufferance.—They are tenants who hold over or remain in possession of the land after the expiration of their lease. The tenant at sufferance must have originally been in possession of the land by right and by lawful lease, although his holding possession after the expiration of his lease, is wrongful. In most States it is provided by statute that a tenant by sufferance is entitled to notice to quit or give up possession.

Tenants at Will, are persons who lawfully enter into the possession of land, but for no definite term or period. They are subject to be put off at any time at the will of the landlord, and are therefore called tenants at will. The possession is always right and lawful, whereas the possession of a tenant by sufferance is wrongful. It is sometimes provided by statute that a tenant at will is entitled to notice to quit. Ordinarily he can be put off without notice, although he is entitled to the crops he may have planted.

Tenants From Year to Year, are those who have a lease for one year certain, and if they hold over after the expiration of the year they have a tenant's rights for another year. They are always entitled to notice to quit. It is important for both landlords and tenants to understand the result if the tenant does not move at the end of his year. By holding over he may secure the right to remain another year, or the landlord may compel him to pay the rent for another year.

Tenants for Years, are quite similar to tenants from year to year. They are all persons who rent or lease land for some

determinate period, and if the lease is only for half a year, or a quarter, or any less time, the lessee is regarded as a tenant for years. In any event, if an annual rent is paid, the tenant is a tenant from year to year. If no definite time is agreed upon, and the rent is not an annual rent, but is to be so much a week, month or quarter, the tenant is a tenant for years in law, although his tenancy may be weekly, monthly or quarterly.

Tenants for Life.—Reference has already been made to this form of tenancy under the discussion of the interests in land. A tenant for life is entitled to the use and occupation of the land during his life time. In this connection the tenancy frequently arises from what is called a life lease. This is a lease in writing for the period of the life time of the lessee. He may or he may not pay rent.

The Term of Leases.—In addition to what has already been said regarding the duration of leases attention should be called to the fact that the statutes sometimes limit the time for which leases may be given. In the State of New York, for instance, it is provided by the constitution that no lease of agricultural land shall be made for a longer period than twelve years.

The Rent, is the compensation paid by the tenant for the use of the land and the privilege of occupying it. If the lease, whether verbal or written, specifies when and where it shall be paid it must be paid accordingly. If the lease is by the week, month or year, the rent is not due until the end of the week, month or year, unless it is expressly agreed that it shall be payable in advance. It is payable on the land unless it is expressly agreed that it shall be paid elsewhere. The statutes of many States provide that if the premises are wholly or partially destroyed by fire or otherwise, there shall be an abatement of the rent accordingly. Where there is no statute on the subject the tenant is bound to pay the rent to the end of the term of his lease, although he receives no benefit from the property. As already intimated if the parties have never agreed upon the rent to be paid, the tenant is bound to pay the reasonable rental value of the premises or what they will rent for at the time and place.

A Sub-Tenant, is a tenant or lessee holding a lease from a prior tenant or lessee. When a lease contains no covenant or stipulation against the sub-letting of the premises, a tenant in possession under it, may sub-let the whole or a part of the premises, to another. The person to whom he sub-lets is a sub-tenant. The premises cannot be sub-let to be used for a purpose inconsistent with the original lease. A tenant may also assign his lease and the assignee is virtually a sub-tenant. If the premises are sub-let for a wrongful purpose, or a purpose inconsistent with the original lease, the landlord may restrain the tenant or sub-tenant from using or occupying the premises for any other purpose than that originally contemplated. It is customary in cases where the landlord does not sanction sub-letting by his tenant, to insert in the lease a clause to the effect that no part of the premises shall be sub-let, and that the lease shall not be assignable, and further, that the lease shall become void if the tenant assigns it or sub-lets. If such a condition is not made part of the contract, however, the tenant may always sub-let the premises or assign his lease, whether the lease is verbal or in writing.

Conveyance During the Lease.—The landlord may always sell or mortgage the premises during the term of the lease, unless the contract of leasing contains a condition to the contrary. The conveyance, however, is subject to the tenant's rights. A sale cannot effect his right to possession. He holds until the expiration of his lease, although the ownership of the property has changed. If the property is encumbered by mortgage, however, at the time the lease is made, the tenant's rights are subject to the mortgage. If the landlord fails to pay the mortgage, and it is properly foreclosed, the lease is forfeited. The tenant may be put off by the purchaser at the mortgage sale. The tenant has a right of action, however. against the landlord for damages.

Removal of the Tenant.—If the tenant fails to pay the rent agreed upon, there is a method usually provided by statute whereby the landlord can summarily remove him from the premises and annul the lease. If the tenant is entitled to notice to quit, that must be given, or the rent must be de-

manded before the landlord can commence proceedings to recover possession. It used to be the custom, both in England and the United States, to allow the landlord to seize the personal property of the tenant which might be on the premises, in payment of the rent. This was called distress for rent. It is seldom allowed now.

Notice to Quit.—We have seen that there are circumstances under which a tenant in possession of land is entitled to notice to quit before he can be ejected by process of law. The statutes frequently define what shall constitute a lawful notice, and how it shall be given. It is best to have the notice in writing, and to have it so drawn that it requires the tenant to remove from the premises within a period corresponding to the period of the lease. If the lease is by the week or month, a week's or a month's notice is ordinarily required. The following is an ordinary form of notice:

NOTICE TO QUIT.

To John Doe, tenant; take notice that you are hereby required to surrender possession of the premises now occupied by you at No. 65, on the southerly side of Magnolia Avenue, in the town of Arcadia, and I demand possession of said premises.

Dated June 1, 1891. RICHARD ROE,
Landlord.

At the expiration of the proper time, after the service of the notice, the landlord may commence the proceeding at law to remove the tenant.

Waste, is a permanent injury to the property, committed by the tenant, such as the cutting down of growing timber, the tearing down of fences, the removal of partition walls in a house, or the removal of doors or windows. It is also waste if the tenant without committing any act on his part, passively allows the fences and buildings to fall down or decay, excepting through natural wear and damage by the elements. If he permits the natural condition of the premises to change in character, contrary to the dictates of good husbandry, he is guilty of waste. A common instance of waste is the occurence of fires negligently started by the tenant or his servants. In

case a tenant is guilty of waste, the landlord may sue him for damages or resort to the courts for an injunction restraining him from a further commission of it.

Repairs.—Nothing more frequently gives rise to disputes between landlords and tenants than the question of repairs. There is much popular misapprehension as to the law of repairs. When leases are made, the parties seldom go sufficiently into details as to provide by whom, and how, repairs shall be made. The general rule is, that the landlord is not bound to make repairs unless he expressly agrees to do so at the time the lease is made. But the rule does not stop here. If nothing is said regarding repairs, and no agreement reached, the tenant is usually bound to make ordinary repairs, such as putting up fences, or replacing or repairing doors or windows which are broken, or become out of repair during the tenancy. As the law books say, the tenant is bound to "keep the premises wind and water tight." But the tenant is not liable for the ordinary and natural wear of the premises. He is not bound to repair damages caused by the elements, without his fault. He is not bound to renew materials worn through natural decay. He is bound to so use the property as to make future repairs unnecessary, as far as possible, but his liability does not extend to damages arising from accident. Moreover, a tenant cannot stop paying rent so long as he occupies the premises, no matter what state of disrepair they are in. He may remove, and annul the lease if the premises become untenantable without his fault, and by reason of disrepair which he is not bound to remedy. Generally, however, so long as he continues in possession he must pay rent. If the landlord, however, is under agreement to make repairs, the tenant can enforce that liability by offsetting damages against the rent. If the tenant expressly agrees to make repairs, or as it is frequently put in the lease "to keep the premises in repair" he is bound to do more than in case nothing is said about repairs. If the premises are new and in good condition when the lease commences, the tenant is then bound to keep them in as good condition, although he is not charged with the duty of replacing buildings destroyed by the elements. If the premises are old, the tenant is not

necessarily bound to restore them to an improved state, but must keep them in substantial repair. It will be seen, therefore, that the liability to repair falls generally on the tenant, and that the landlord is bound to do nothing unless he has made his agreement to repair.

Eviction, is any actual expulsion of the tenant, or disturbance of his possession during the term of the lease. The tenant has an absolute and exclusive right to the possession and enjoyment of the land. He must not be disturbed in that possession. If he is disturbed so as to compel him to abandon the premises, it amounts to an eviction. Eviction may, therefore, be actual or constructive.

Actual Eviction, is the forcible removal of the tenant from the premises by the landlord, or by any one acting under the landlord's authority. Constructive eviction is the intentional disturbance of a tenant's possession by the landlord or by any one acting under the landlord's authority, whereby the premises become untenantable, or the tenant is compelled to abandon them.

The Result of an Eviction, is to suspend the rent. It does not forfeit the rent already due at the time of the eviction, nor is the rent forfeited if the tenant remains in possession in case of constructive eviction. He may off-set his damages against the rent, but if he continues to occupy the premises, although he might abandon them on account of the constructive eviction, he must pay the rent.

QUESTIONS.

Page 148.—What are leases, and who may be parties to them? When must a lease be in writing. When may it be verbal?

Page 150.—What is a tenant by sufferance? At will? From year to year?

Page 151.—What are tenants for years, and for life? What is rent, and how is it payable?

Page 152.—What is a sub-tenant, and what is sub-letting? How may a tenant be removed?

Page 153.—What is waste?

Page 154.—When must a tenant make repairs, and when a landlord?

Page 155.—Distinguish between actual and constructive eviction?

FIXTURES.

Definition.—Fixtures are articles of a personal nature which have been affixed to land. Before becoming affixed to the land they are personal property. After becoming affixed to the land they cannot be removed, but are a part of the land, and go with it when it is sold or leased. All articles are fixtures which are so annexed to the land, and connected with it, as to be incapable of removal without injury to the land or buildings. A pump in a well, a fence, a heating furnace, boilers, machinery, chandeliers, gas fixtures, store shelving, are common instances of fixtures.

A Grantee's Fixtures.—A question of what constitutes a fixture may arise between a person selling and a person purchasing land, or it may arise between a landlord and a tenant. The grantee of land is entitled to all the articles which have become fixed to it, or to the buildings, so as to be permanently and habitually attached. He is entitled to anything which is a component part of the land, or which is a part of the buildings, for the purpose for which they are designed, and without which they would be imperfect, or incomplete for the use for which they are designed. The fact that the articles can be removed without injuring the land or buildings is not controlling. A portable furnace in the cellar may be easily removed. It may have no permanent attachment to the house, and yet if it was put there with the intention of making it a part of the house, and without it the house would be incomplete, as if there was no other method of heating, the furnace would be a fixture, and would go with the house on a sale. If the seller of land desires to take away articles of the nature of fixtures, the safe and proper course is to have an agreement to that effect, and have the right to remove the articles reserved in the deed, providing they are not removed prior to its delivery.

A Tenant's Fixtures.—The law is more liberal in allowing a tenant to remove articles of the nature of fixtures, which he has himself put upon the premises. Of course, he has no right to remove anything which was there when he took possession. When a tenant makes improvements of a permanent character without the knowledge or consent of the landlord, they ordinarily become fixtures which he has no right to remove. If the tenant makes improvements, however, with the landlord's consent and authority, the presumption is that the tenant is to have the benefit of them at the expiration of his term. Locks, keys, shutters and doors and other such things put up by the tenant for the security of the premises, ordinarily belong to the landlord and must be left in place, if the premises would be left in an insecure condition by taking them away.

The Intention of the Parties, has much to do in deciding whether an article is a fixture. For instance, if the owner of land, or a tenant, makes an improvement or erection with the intention of making it a part and parcel of the land, and of permanently employing it in the use of the land or buildings, that intention will be operative in causing the erection or improvement to be a fixture. It is quite as material as the manner in which the article is fastened.

Landlord's Fixtures.—All improvements or additions made by the tenant during his lease, which the tenant has no right to remove, belong to the landlord. Leases of business property frequently provide that all improvements or additions made by the tenant shall remain on the premises and become the property of the landlord.

QUESTIONS.

Page 156.—What are fixtures? What are a grantee's fixtures?

Page 157.—What are a tenant's fixtures? What are landlord's fixtures? How does the intention of the parties affect the question of fixtures?

NUISANCE.

Definition.—A nuisance is anything that annoys or incommodes a person in the enjoyment of life and property. Every man is entitled to enjoy life, and enjoy the use of his property without any unlawful restraint or inconvenience. Every man is entitled to light, to pure air, to pure water, to freedom from unusual and unnecessary noise. Anything which infringes upon these rights is a nuisance.

Using One's Own Property.—It follows that a man cannot use his own property so as to unreasonably injure the property of his neighbor by rendering it less habitable and enjoyable. He cannot conduct any business on his own property which creates unusual smoke, or noisome smells, or unusual noises.

Instances of Nuisance are forges or noisy workshops, soap factories, dye houses, lime-kilns, tanneries, hog-stys, cesspools, the construction of a cornice or water spout so as to cast an unnatural quantity of rainwater into a neighbor's building or on his land, the corruption of a brook or water course by depositing foul substances in it. The only condition is that these things result in a permanent, substantial and material damage and injury to the use and enjoyment of the adjoining property, or the enjoyment of life there.

Nice Sensibilities.—Every disagreeable noise or annoyance does not constitute a nuisance. The wellfare of mankind demands that certain kinds of business shall be prosecuted, although productive of some annoyance. The question, therefore, is not whether the thing is an annoyance to people of extraordinarily fine sensibilities, but does it materially disturb the quiet and repose, or substantially interfere with the comfortable enjoyment of the neighboring premises by people of ordinary tastes and sensibilities.

Substantial Damage.—The thing complained of must be a substantial injury to the enjoyment of life and property. For

instance, the inhabitants of a great city must expect to suffer the consequences which come from the ordinary bustle and noise incident to ordinary business pursuits, conducted in an ordinary and usual manner. Such things become nuisances when they are conducted in such an extraordinary manner as to render life physically uncomfortable, or materially injure property. Smoke from a factory may be a nuisance if unusual quantities of soot are deposited on the adjoining property, or the health of the occupants materially affected.

Public and Private Nuisances.—If the nuisance is injurious to a large number of people, to a neighborhood or community, it is a public nuisance, and may be repressed by the public authorities, although any one especially injured may do so. A thing which injures only a particular piece of property, or interferes with the material enjoyment of life there, is a private nuisance.

Remedies.—The person who authorizes or maintains a public nuisance may be indicted and punished as for a crime, or any person who is especially injured by it may have an action for damages, or injunction to restrain its further maintenance. In case of a private nuisance there is always an action for damages, or for restraining it, by the individual injured.

QUESTIONS.

Page 158.—What is a nuisance? How must a man use his own property? Give some of the instances of nuisance. To what extent must the enjoyment of life and property be affected in order to constitute a nuisance?

Page 159.—Distinguish between public and private nuisances. What are the remedies against a nuisance?

HIGHWAYS.

Definition.—A highway is any thoroughfare used by the public generally, whether it be a carriage-way, a horse-way, a footway or a navigable river. It is not a private way used by one or two persons for particular purposes and on which only certain persons have the right to pass. As the old English books say, it is a thoroughfare "common to all the king's subjects." It is used by any one and every one who may have occasion to pass over it.

Establishing of Highways.—Highways are usually established (1) by deed, (2) by dedication, (3) by prescription, (4) or by being opened and laid out according to statute.

Highways by Deed.—The owner of land who is willing to have a highway over it, whether for the benefit which will arise to himself, or from the desire to accommodate the public, may execute a deed of the land, to the city, town or village in which it is located, to be used for the purpose of a public highway. The city, town or village is the grantee. If the grantee accepts the deed, the land thenceforth becomes a public highway, for the use of the public at large, and the grantee, which as we have seen is a kind of corporation, owns the soil for the use of the public.

By Dedication.—A dedication of land for the purpose of a highway is a voluntary donation by the owner of the land followed by an acceptance on the part of the public. A dedication differs from a deed in that it need not be in writing. Moreover, in case of a deed of land for a highway, the grantee secures the ownership of the soil. In case of a dedication, the soil remains the property of the owner. He simply donates the right to use it for the purposes of a highway. If the owner of a tract of land cuts it up into lots and streets, and causes a map, showing the lots and streets, to be filed in the usual public office, he thereby dedicates that portion of the tract laid out on the map as streets. The act of the owner in filing the map

must be followed by an acceptance on the part of the public. The public must signify its acceptance by using the street. If the acceptance does not follow, and the street is not used or worked for a reasonable length of time, a dedication does not result, and the owner may enclose it, and thereby recall or revoke the dedication. An owner of land may dedicate land for a highway, by himself laying it out, grading it and enclosing it with boundary fences, or by any act of his whereby he evinces a willingness to dedicate it to the public use.

Highways by Prescription.—Under the discussion of title to real estate it was stated that a man might acquire title by twenty years use and occupation. It is called title by prescription. In the same way the public may acquire a right of thoroughfare by long continued use of land for highway purposes. The land so used in time becomes a public highway. The owner of the soil cannot close it or obstruct it. If an owner of land does not wish to have a highway established upon it, he must not acquiesce in its use by the public. He must take active measures and means to prevent the public passing upon and crossing it, otherwise after a lapse of time, usually twenty years, it will be presumed that he has dedicated it and he will then be unable to enclose it.

Highways Laid Out by Statute.—In nearly every State there is a statute for the laying out of highways. It is provided that if a highway is needed at any particular point the officers charged with the duty may have a jury of the inhabitants summoned. If the jury decide that a highway is needed it may assess the damages to be paid to the owner of the land.

Ownership of the Soil.—It will be seen that in none of the instances of the formation of highways just specified does the owner of the land lose his ownership of the soil of the highway, except in case of highways by deed. In each of the other instances the owner of the land through which the highway runs owns the soil itself of the highway. His ownership is subject to the public right of passage and use. If the highway is abandoned, or closed, the soil reverts to the owner. Even in case of a highway by deed, the soil may revert to the original owner, if the highway is discontinued.

Closing of Highways.—The law is tenacious of the rights of the public to the use of a highway, and when a highway is once established it cannot be closed except by process of law. There is in each State, usually, a statute providing a method by which a highway may be discontinued or closed, providing it is no longer needed. As in case of laying it out, it is closed by a decision of a jury of the inhabitants.

Conveyance of Highways.—We have seen that the original owner of the land may own the soil of the highway, subject to the public use. He may, therefore, sell and convey the highway, subject to the public use. It is important to know, therefore, when a deed of land includes the highway on which it fronts. If the land deeded lies on both sides of the highway or street, and the boundaries used in the description, include the highway, the deed will convey the highway. It may be said generally, that a deed of land includes the highway on which it fronts, unless the wording indicates a contrary intention. In all cases where a deed bounds land "on," "upon," "by" or "along" a highway, the deed includes to the centre of the highway. If the deed, however, bounds the land by the "line" of the highway, it does not convey any part of the street. A deed of a lot describing it by its number with reference to a map, does not usually convey to the centre of the street on which the lot fronts. If the grantee in a deed does not get title to any part of the street, he simply has the right to use the street as a means of access to his property, or the same right to use it as the public at large. On the other hand, the owner of the soil of the highway has an absolute right to use it for his individual purposes, so long as he does not hinder or obstruct the public use. He may prevent or restrain any application or use of it not properly pertaining to a highway, such as the laying of a street-railway track, or the erection of buildings or structures upon it. He may restrain the removal of shade trees upon it, provided they do not interfere with the public use. If the owner of adjoining land does not own the soil of the highway he cannot object to any use of it by the public, or by individuals, unless such use materially interferes with the access to his adjoining property.

Obstructions in Highways.—Highways being for the use and accommodation of the public, any obstruction which interferes with the free use of the whole road is unlawful. It is immaterial that only a part of the road is obstructed, and that travelers may pass along the other side,—they are entitled to the free and undisturbed use of the whole. No one has a lawful right for instance, to use the highway for the purpose of loading or unloading goods; for the erection of a booth or any object calculated to frighten horses, or for the purpose of depositing building materials or goods. No one has a right to make any excavation in the surface, or beneath a highway, or overhang an awning or other structure. If such unauthorized use of the highway infringes the public right of use, it is a public nuisance, and may be punished by the public authorities. Any individual who is especially injured may restrain the encroachment or may sue for damages.

The Law of the Road.—It is the rule in this country that vehicles meeting on the highway must turn to the right. In England and in some other countries the rule is to turn to the left. Each vehicle is entitled to one half of the traveled portion of the road. The driver of a vehicle has no right to obstruct the passage of another vehicle, going in the same direction at a greater rate of speed. Vehicles of every description must be driven with that care and caution which the condition of the highway and the number using it, demands.

Vehicles Having a Right to the Highway.—It is now a settled rule that a bicycle is a vehicle and the rider has the same right to enforce the law of the road, as in case of any of the well known kinds of vehicles. A person may go upon the highway with any form of vehicle used for the transportation of goods or passengers and demand his lawful right to the reasonable use of the highway. He may take a self-propelling or traction engine upon it if he chooses, although in such case he does so at the risk of paying damages for injuries which he may cause, providing the engine or such other object as he takes upon the highway, is an unusual or extraordinary object, and calculated to frighten horses.

Repair of Highways.—A person who owns land adjoining

a highway is under no obligation to repair a defect which may arise in it, and is not liable for a state of disrepair, unless caused by his own act. By the common law there is no obligation resting upon individuals or the public authorities to keep highways in repair. The duty is regulated by statute. The highway statutes of each State impose the obligation upon the town, city or village in which a highway is located, to keep it in a proper state of repair. For a failure to perform its duty, or for a failure of the highway commissioners or other proper officers to perform their duties, the town, city or village is liable for damages to any one injured. The general rule, therefore, is this: it is the duty of every town, village or city in which a highway is located, to keep the same in a proper state of repair, and in a reasonably safe condition for all who may have occasion to use it in an ordinary and usual manner. The obligation does not extend to the use of the highway for extraordinary loads or burdens. For instance, if a culvert or bridge on a country highway goes down under the weight of an elephant, passing with a menagerie, the town is not liable, providing the bridge was in a reasonably safe condition.

Vehicles and Pedestrians.—The relative rights of vehicles and pedestrians in a public highway, or city street, is a frequent matter of dispute and is frequently misunderstood. The invariable rule is that each has equal rights. Each is bound to exercise that degree of care and prudence which the circumstances of the case demand. Vehicles cannot rush along regardless of pedestrians, nor can pedestrians demand that vehicles give way to them. The obligations are mutual. It is the duty of drivers to turn aside or stop their teams to avoid injuring people who may be crossing the street. At the same time, it is the duty of a pedestrian to look in either direction for approaching teams, and to use ordinary care and prudence in avoiding them. If a pedestrian makes a mistaken estimate as to his ability to cross in front of an approaching team, and is injured by reason of his mistake, he cannot recover damages. Pedestrians are under the same obligation to watch for street cars, and street car drivers are in duty bound to exercise the same degree of care to avoid pedestrians.

Vehicles and Street Cars.—The law of the road which, as we have seen, requires vehicles meeting each other, to pass to the right of the center of the traveled road and to use ordinary care and caution in passing, does not apply to vehicles meeting street cars. A vehicle is bound to give the street car the right of way, as the track is set apart for the exclusive use of the car. But on the other hand, a vehicle meeting a car may turn either to the right or to the left, and if a collision occurs, the mere fact that the driver of the vehicle turned to the left instead of the right, will not affect the case. It is held that the driver of a vehicle on a street car track must be constantly on the look out for the coming of a car, and that it is his duty to turn off the track upon the approach of the car.

Rate of Speed.—Vehicles or street cars cannot be driven at an immoderate rate of speed. Immoderate speed imposes an obligation to pay damages for injuries to others, although the injured person may have been negligent. If a collision occur between vehicles where each has been negligent, the injured party is not entitled to damages, unless the accident could not have been averted by him by the exercise of ordinary care. Every person using a street, whether as a pedestrian or as the driver of a vehicle, has a right to expect from others, ordinary care and prudence. He may rely upon the fact that every one is supposed to exercise that care in determining his own manner of using the road.

QUESTIONS.

Page 160.—What is a highway? Define highway by deed By dedication.

Page 161.—Define a highway by prescription. A highway by statute. Who is the owner of the soil of highways?

Page 162.—How are highways closed? When does the grantee of land on a highway get title to the center? What are the rights of the owner of the soil of a highway?

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Page 165 —What are the relative rights of vehicles and street cars? What is said in regard to the rate of speed in highways?

DEFINITIONS.

Abandonment. In marine insurance, the giving up of property partly destroyed, by the owner to the insurer.

Abatement of a Nuisance. The remedy which the common law allows a party injured by a nuisance, of destroying or forcibly removing it, so long as he occasions no damage beyond what the abatement necessarily requires.

Abatement Among Legatees. The proportionate reduction of legacies, where the estate bequeathed by a will is not sufficient to pay all legacies in full.

Abjuration of Allegiance. The declaration under oath required of every alien before naturalization, renouncing all allegiance to any other sovereign.

Absolute Conveyance. A transfer of property free of any condition or reservation.

Abutting. Bordering upon. Lands bounded by a highway or fresh water stream abut on the stream or road, and the owners are called abutting owners.

Acceptance. In mercantile law: (1) The act by which the person upon whom a bill of exchange or other order is drawn, engages to pay it. (2) The bill after it has been accepted.

Acceptor. One who accepts an order, draft, or bill of exchange.

Accommodation Paper. Commercial paper for which no consideration passed between the original parties.

Accord. Agreement.

Account Stated. An account balanced and rendered, and assented to by the parties although not paid.

Acknowledgment. The act by which a party who has executed an instrument declares or *acknowledges* it before a competent officer to be his or her act and deed.

Action. The formal means of recovering one's rights in a court of justice—a suit.

Act of God. Any accident produced by a physical cause which is irresistible, such as lightning, tempest, etc.

Ad Valorem Duties. Customs duties imposed upon imported articles according to either the value or the actual cost.

Adjudication. The act of a court in giving judgment in suit or controversy.

Admeasurement of Dower. The setting apart for the use of the widow of such a portion of land as will amount to her dower or "third;" called also assignment of dower.

Administrator. One who administers on the property or estate of a person dying intestate, and is accountable for the same.

Affidavit. A statement in writing, signed by the person making it, called the affiant, and sworn to before a notary public or officer authorized to take oaths.

Affinity. Relationship by marriage.

Affreightment. The hiring of a ship for the conveyance of goods.

Agency. The relation existing between two parties, by which one is authorized to do certain acts for the other, with other parties.

Agent. Any person who is employed by another to do any act for the employer's benefit or account.

Age of Consent. The age at which infants are capable of making a valid contract of marriage.

Alien. One born out of the jurisdiction of the United States and owing allegiance to a foreign sovereign.

Alien Enemy. An alien who is the subject of a hostile power.

Alimony. An allowance made to a wife out of her husband's estate during a suit for divorce or separation, or at its termination, for her life or for a shorter period.

Alteration. The changing of the words or figures of a written instrument by the holder after it has been executed and delivered. If the change is not sufficiently material as to mislead anyone, it is not usually called an alteration.

Amotion. Removal of an officer of a corporation.

Ante-dated. Dated at a time earlier than the actual date.

Annulment. The act of making void.

Appurtenance. In a deed or lease, anything which will go with the land, as a right of way or a yard which has always been used with it.

Arbitration. The investigation and determination of a cause or matter in controversy by an unofficial person, or arbitrator.

Arbitrator. A disinterested person selected by parties in dispute to decide the controversy.

Articles of Copartnership. The written agreement by which a copartnership is formed.

Assault. An illegal and forcible attempt or offer to do a bodily harm to another.

Assent. Act of agreeing to anything; consent.

Assets. Property available for the payment of debts.

Assignee. The person to whom the failing debtor transfers all his remaining property for the purpose of having it distributed among his creditors; one to whom anything is assigned.

Assignment. A transfer by a failing debtor of his property to an assignee. A transfer by one person to another of any property, personal or real.

Assignor. One who assigns property.

Assurance and Assured. Same as *Insurance* and *Insured.*

Attachment. The seizure of a defendant's property by legal process, in order to satisfy any judgment which may be rendered against him in the suit.

Attorney in Fact. An agent appointed by power of attorney.

Award. The decision of arbitrators.

Bailment. A delivery of goods in trust upon a contract, express or implied, that the trust shall be faithfully executed on the part of the bailee. The *bailor* is he who delivers; the *bailee*, he to whom delivery is made. The hire of personal property, of services, of custody and of carriage are species of bailments.

Bank Bill. A written promise to pay to the bearer on demand a certain sum of money, issued by a bank and used as money.

Bank Note. Same as *Bank Bill.* A note payable at a bank.

Bankruptcy. The condition of one who is unable to pay his debts.

Bargain. A common synonym of contract.

Barratry. Any breach of duty committed by the master of a vessel or the seamen, without the consent of the owner, by reason of which the ship or cargo is injured.

Barter. To trade by exchange of goods, in contra-distinction from trading by the use of money.

Battery. An unlawful assault committed by one person upon another.

Beneficiary. (1) In life insurance, the person to whom a policy is made payable. (2) The person for whose benefit another holds the legal title to real estate.

Betterments. Improvements made to real estate which render it better than mere repairs.

Beyond Seas. Denotes absence from the country, and generally held to mean absence from the particular State.

Bigamy. The wilfully contracting a second marriage while a husband or wife is still living.

Bill of Exchange. A direction in writing, by the person who signs it, ordering the one to whom it is addressed to pay a third person a definite sum of money at a specified time.

Bill of Lading. A document delivered by a carrier to one sending goods by him, acknowledging that they have been received by him for transportation to a certain place. It is both a receipt and a contract.

Bills Receivable. Notes, drafts or other securities for money, which a merchant holds.

Bill of Sale. An agreement in writing by which one person sells his interest in personal property to another.

Blank Indorsement. One in which no particular person is named as the one to whom payment is to be made. It consists of the indorser's name alone.

Blockade. The closing of communication with a port or place by hostile forces.

Body Corporate. A corporation.

Bona Fide. In good faith, as distinguished from Mala Fide, in bad faith.

Bond. A written and sealed instrument by which one agrees to pay to another a certain amount of money, unless something else specified therein is done.

Bonus. An additional premium paid for the use of money beyond the legal interest.

Bottomry Bond. An obligation given for a loan upon a vessel and accruing freight.

Bought and Sold Note. A written memorandum of sale, delivered by a broker effecting a sale, to the buyer.

Breach. In the law of contracts, the violation of an agreement or obligation.

Bribery. Receiving or offering a reward to affect the conduct of a public officer.

Broker. One engaged in negotiating contracts for the purchase or sale of property in which he has no interest.

Bullion. Any kind of gold or silver in the mass or lump.

By-Bidder. A person employed to bid at auctions in order to raise the price of articles to be sold.

By-Laws. The private laws or regulations made by a corporation for its own government.

Cancellation. The manual act of erasing or destroying a writing.

Capita. By the head.

Capital Stock. The fund or property, as a whole, contributed or supposed to have been contributed to a corporation at its organization, as its property.

Caveat. In the patent law, a notice from an inventor not to issue a patent of a particular description to another.

Caveat Emptor. Latin phrase, meaning "let the purchaser beware," and applies to a case in which the thing sold is before the buyer and he examines it.

Certificate of Deposit. A certificate issued by a bank or banker, showing that a certain sum of money has been deposited there, payable to a certain person, or to his order, or to the bearer.

Certificate of Stock. A certificate given by the proper officers of a corporation, showing that a certain person owns a certain number of shares of the capital stock.

Certification (of check). The signature of the proper officer of the bank written across its face, sometimes with and sometimes without the word "certified," or "good." It is a recognition of the check by the bank as good in two particulars, viz.: (1) That the drawer's signature is genuine, and (2) that he has that amount of money in the bank.

Charter. (1) A special act of legislature creating a particular corporation. (2) To hire or let a vessel or part of it.

Chartered Ship. One let wholly or in part.

Charter Party. The written instrument by which the owner of a vessel lets it, or a part of it, to another.

Chattel Mortgage. A conditional sale of personal property, one which is to become void if a certain thing happens. Chiefly used as a security for the payment of money.

Chattel Real or Real Chattel. An interest connected with real estate, as a lease.

Chattels. Commonly means goods of any kind, or every species of personal property.

Check. A written order for money drawn upon a bank or banker, and payable immediately.

Chose in Action. A thing of which one has not the possession, but only a right to demand it by action at law.

Chose in Possession. Personal property of which one has the actual possession.

Civil Law. The system of law of ancient Rome.

Civil Remedy. The method of redressing an injury inflicted by one person upon another.

Clearing House. An office where bankers settle daily with each other the balances of their accounts.

Codicil. Some addition to, or qualification of a will, executed after the will.

Collateral. Property pledged as security for the performance of a contract.

Common Carrier. One who, as a business, undertakes for hire to transport from place to place, passengers or goods of all who choose to employ him.

Common Law. The unwritten law as distinguished from written or statute law. The old law of England that derives its force from long usage and custom.

Common Seal. The seal of a corporation.

Compact. An agreement between parties similar to a contract.

Competency. The legal fitness of a witness to give evidence on the trial of an action.

Composition Deed. An agreement between an insolvent debtor and his creditors by which upon payment to each of some fixed proportion of his claim, they all agree to release the debtor from the balance of their claims.

Compromise. An agreement between a debtor and his creditors, by which they agree to accept a certain proportion of the amounts due, and discharge him from the remainder.

Concurrent. Existing together. A consideration is concurrent when the acts of the parties are to be performed at the same time.

Condition Precedent. An act which must be performed by one person before another is liable, or in order to make him liable.

Confirmation. The ratification of a contract which was voidable, whereby it is made valid.

Conflict of Laws. The difference between the laws of two or more States.

Confusion of Goods. A mixture of the goods of two or more persons so that they cannot be distinguished.

Consanguinity. Relation by blood.

Consent. A concurrence of the wills of two or more contracting parties.

Consideration. The reason or inducement in a contract upon which the parties consent to be bound.

Consignee. One to whom merchandise, given to a carrier by another person for transportation, is directed.

Consignment. The goods shipped through a common carrier by the consignor to the consignee.

Consignor. One who gives merchandise to a carrier for transportation to another.

Contract. An agreement between two or more persons to do or not to do a particular thing.

Conversion. An unlawful exercise of ownership over goods or personal property belonging to another.

Conveyance. (1) The act of carrying by land or water. (2) The means of conveyance. A written instrument by which an estate in land is transferred from one to another.

Copartnership. Same as partnership.

Corporation. An artificial being or person endowed by law with the capacity of perpetual succession, and of acting in certain respects like a natural person. When it consists of one individual it is termed a corporation *sole,* and when composed of a collection of several individuals it is called a corporation *aggregate.*

Copyright. The exclusive privilege secured from a government for printing, publishing and selling copies of writings or drawings.

Counter-Claim. Same as *Set-off.*

Course of Exchange. The current price of bills of exchange between two places.

Covenant. Any promise contained in a sealed instrument. The person to whom the promise is made is the *Covenantee.* The person making the promise is the Covenantor.

Coverture. The legal state and condition of a married woman.

Criminal Remedy. The method of punishing a wrong-doer for some wrong committed by him against society.

Curtesy. The estate a man has in the lands of his wife upon her death, in case a living child has been born to them during their marriage.

Damages. Compensation in money to be paid by one person to another for an injury inflicted by the former upon the latter, or for the failure to keep a contract.

Day. Twenty-four hours. An entire day.

Days of Grace. Days (usually three) allowed by custom for the payment of bills and notes beyond the day expressed for payment on the face of them.

Declaration of Intention. The act of an alien who goes before a court of record and formally declares his intention to become a citizen of the United States.

Dedication. An appropriation of land made by the owner to some public use, usually for a highway, and accepted for such use by the public.

Default. Omission; neglect or failure.

Defeasance. An instrument which defeats the effect of another instrument. If it is in the same deed it is an addition; if by itself, it is a defeasance.

Defense. The answer made by the defendant to the plaintiff's action, by demurrer or plea at law.

Delivery. The transfer of a written instrument from the person executing it, or the grantor, to the person entitled to receive it, or the grantee.

Demand. Presentment for payment.

Demurrage. The allowance to be made by the shipper to the vessel owner as damages for detention of the vessel beyond the time specified in the charter party.

Deposit. A bailment or delivery of goods to be kept and returned without recompense.

Deposition. The testimony of a witness reduced to writing to be used in court.

Descent. Inheritance of real property.

Deviation. In the law of marine insurance, a voluntary departure without necessity from the regular course of the specific voyage insured.

Devisee. A person to whom real property is devised or willed.

Disability. Want of qualification; incapacity to do a legal act.

Disaffirmance. The annulling or cancelling of a voidable contract.

Discount. (1) The taking of interest in advance. (2) A deduction from a price asked, or from an account, debt, or demand.

Disfranchisement. Expulsion of a member from a corporation.

Dishonor. The non-payment of negotiable paper when it is due.

Distress. The taking of personal property to enforce the payment of something due, as rent.

Distribution. The division among those entitled, called the next of kin, of the personal property of one dying without a will.

Divorce. The separation of husband and wife by the sentence of the law.

Dollar. The money unit of the United States.

Domestic Relations. The relations of the members of a household or family.

Domicile. The place where a man has his permanent home, and to which he intends to return if absent.

Dower. The right of a widow to the use or ownership of some portion of the real estate owned by her husband.

Draft. Same as bill of exchange.

Drawee. The person upon whom a bill of exchange is drawn, who is directed to make the payment.

Drawer. The person who draws or makes a bill of exchange.

Duress. Personal restraint or compulsion.

Easement. The right to use another's land.

Effects. All kinds of personal property.

Ejectment. A form of law suit to regain possession of real property.

Embezzlement. The fraudulent removal or secretion of personal property by one who is intrusted with it.

Emblements. Growing crops of any kind produced by expense and labor.

Embracery. The attempt to corrupt or influence a jury.

Eminent Domain. The right of the sovereign power to take private property to public purposes.

Enact. To make a law or to establish by law.

Equitable Estate. An interest in land not evidenced by a deed, but of which a Court of Equity will take notice.

Equity of Redemption. The right which a mortgagor has to redeem his estate after the mortgage has become due.

Escheat. The reverting of land to the State upon the death of the owner without lawful heirs.

Escrow. A deed or bond delivered to a third party to be held and delivered to the grantee or creditor upon the performance of some condition.

Estate. An interest in real property.

Estate by Curtesy. See *Curtesy.*

Estate for Life. An interest in land for life.

Estate in Fee-Simple. The interest which a man or his heirs have in land without end or limit.

Eviction. The forcible removal of a tenant from land leased by him or the doing of any act by the landlord which deprives the tenant of the of the use of the land.

Executed, (of a contract). Finished.

Execution. (1) A written command issued to a sheriff or constable, after a judgment, directing him to enforce it. (2) The act of signing and sealing a legal instrument, or giving it the form required to make it a valid act.

Executor. One to whom is committed the execution or carrying out of the terms of a will.

Executory (of a contract). Unfinished.

Exemplary Damages. Damages allowed as a punishment for a wrongful act deliberately or maliciously committed. Such damages are in addition to actual damages.

Ex Post Facto Law. A statute which renders an act punishable in a manner in which it was not punishable when it was committed.

Extradition. The surrender by one government to another of a person charged with crime.

Factor. An agent employed to sell goods on commission.

Fee Simple. Full ownership in lands.

Feud. An estate in land, held of a superior by service; a fief.

Feudal System. The system of feuds or fiefs.

Firm. All the members of a partnership taken collectively.

Fixtures. Articles of personal property which have become affixed to land.

Foreclosure. The process of cutting off the right or interest of the mortgagor and his assignees in mortgaged premises.

Forfeiture. A loss of property, right, or office, as a punishment for some illegal act or negligence. Sometimes applied to the thing forfeited.

Forgery. The fraudulently making or altering of a written instrument.

Franchise. A privilege, or right, conferred by grant from government upon individuals.

Fraud. Any cunning, deception, or artifice used to circumvent, cheat, or deceive another.

Freight. The compensation to be paid a carrier for the transportation of goods, or the goods themselves while being transported.

General Average. A contribution made by the owners of a vessel and cargo toward the loss sustained by one of their number, whose property has been sacrificed for the general safety.

General Ship. A vessel navigated by its owner, receiving and carrying freight indifferently for all who apply.

Goods. Same as *chattels* and *effects*.

Good Will. Benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.

Guaranty. A contract whereby one person engages to be answerable for the debt or default of another person. *Guarantor* is he who makes the guaranty.

Guardian. One who is entitled to the custody of the person or property of an infant.

Guest. A person received and entertained at an inn or hotel.

Habeas Corpus. A direction signed by a judge or officer of a court directing a person detaining another to produce the prisoner at a certain time and place.

Heir. One who inherits land upon the death of the owner.

Highway. A passage, road or street, which every citizen has the right to use.

Hire. A bailment in which the compensation is to be given for the use of a thing, or for labor and services performed upon it.

Holding Over. The act of a tenant in remaining in possession of land after the expiration of his lease.

Idiot. One who never had reasoning power.

Importation. The act of bringing goods and merchandise into the United States from a foreign country.

Imposts. Duties on imported goods.

Inchoate. Incipient; incomplete.

Incompetency. Lack of necessary legal qualifications.

Incorporate. To form into a corporation.

Incumbrance. A lien upon land as by judgment or mortgage.

Indemnity. Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

Indorsement (of commercial paper). (1) A name, with or without other words, written on the back of the paper. (2) The agreement implied in one's writing his name on the back of commercial paper, to pay it if the principal debtor does not. The one who makes the indorsement is called the *indorser*. The person in whose favor the indorsement is made is called the *indorsee*.

Infant. In law, is one under the age of twenty-one years.

Injunction. An order or direction of the court compelling a certain person to refrain from doing some particular act or thing.

Insolvency. Same as *Bankruptcy*.

Insurable Interest. Such an interest in the thing insured that the person possessing it may be injured by the risk to which the thing insured is exposed.

Insurance. A contract of indemnity against loss from certain causes. The *insurer* is the party agreeing to make the insurance.

Interest. Compensation allowed by the borrower of money to the lender for its use, or compensation paid by a debtor to his creditor, as recompense for the detention of the debt.

Invalid. Of no legal force.

Inventory. (1) An account or catalogue of goods or movables. (2) In law a list or schedule in writing of the goods, chattels, and credits (and sometimes of the real estate) of a testator or intestate, made by an executor or administrator.

Jettison. The casting out from a vessel of a part of the cargo, in order to avoid a ship-wreck. (2) The cargo thus cast out. If the goods float it is called flotsam.

Joint Stock Company. A species of partnership.

Joint Tenants. Two or more persons to whom land is conveyed by deed or devised by will.

Judgment. The sentence of the law pronounced by the court upon any matter contained in the record, or in any case tried by the court.

Judgment Debtor. Party against whom a judgment is obtained.

Judgment Note. A promissory note in the usual form, and containing in addition a power of attorney on the part of the maker authorizing the holder to take judgment for the amount due, if the note is dishonored.

Judicial Sale. A sale directed by a court; as a sale on the foreclosure of a mortgage.

Landlord. (1) One who owns and rents or leases lands or houses. (2) The host or keeper of an inn; an inn-keeper.

Law. The rules and methods by which society compels or restrains the action of its members.

Law Merchant. The general body of usages in matters relative to commerce.

Lay Corporation. A corporation composed of lay persons, or for lay purposes, as distinguished from religious or charitable corporations.

Lease. A contract by which one person grants to another for a period, the use of certain real estate.

Legacy. A gift by will; commonly applied to money or personal property.

Legal Tender. That kind of money which by law can be offered in payment of a debt.

Lessee. A person to whom a lease is made.

Letter of Attorney. Another name for power of attorney.

Letters of Administration. An instrument issued out of the court having jurisdiction, granting power to settle the estate of one dying without leaving a will.

Letter of Credit. A written direction by some well-known banker authorizing the party to whom it is addressed to draw upon him in a particular manner for any amount he chooses up to a specified limit.

Letters Testamentary. An instrument out of the court having jurisdiction, granting power to the person named as executor in a will to carry out the provisions of the will.

Libel. To defame by published writing, printing, signs, or pictures.

License. A permission or right granted to another, by one having authority, to do an act which would be il egal if unauthorized.

Lien. A right which one person has to retain the property of another by way of security for a debt or claim.

Liquidate. To pay; to settle an account.

Liquidated Damages. Damages agreed upon by the parties to a contract, at the time of the making of the contract, to be paid by the party failing to perform it.

Litigation. The act of litigating; judicial contest; a suit at law.

Loan. A bailment of an article for use or consumption without reward. If the loan is for consumption, the article is to be returned in time; if the loan is for use, the article is to be returned without compensation for the use.

Log-book. A ship's journal containing a minute account of the ship's course, and a reference to every occurrence of the voyage.

Lottery. A scheme for the distribution of prizes by chance.

Low Water Mark. That part of the shore of the sea to which the waters recede when the tide is lowest.

Lucid Intervals. Periods from time to time in cases of lunacy in which the person afflicted becomes sane.

Lunatics. Persons who have lost their reason.

Maintenance. Support by means of food, clothing, and other necessaries.

Malicious Mischief. The wanton or reckless destruction of property or injury to the person.

Malicious Prosecution. The willful institution of a law suit or criminal proceeding without probable cause.

Mandate. A bailment of personal property in which the bailee undertakes without compensation to do some act for the bailor in respect to the thing bailed. The bailor is generally termed the *mandator*, and the bailee the *mandatary*.

Mania. A form of insanity.

Manifesto. A declaration by a nation stating the reasons for its acts toward another nation.

Maritime Law. That branch of the law which relates to the affairs of navigation and shipping.

Marriage Settlement. An agreement made by parties contemplating marriage by which the title to real or personal property is changed.

Martial Law. The military rule existing in time of war.

Material Men. Persons who furnish materials to be used in the construction of ships or buildings.

Maturity. The time at which commercial paper legally becomes due.

Measure of Damages. The rule by which the damages sustained by the plaintiff in a law suit is to be estimated.

Merger. The absorption or extinguishment of one contract in another.

Minor. Same as *Infant*.

Misdemeanor. A lower kind of crime; an indictable offense not amounting to felony.

Misnomer. In contracts a mistake in the name of a party; it does not avoid the contract if the proper party can be ascertained. A misnomer of a legatee in a will does not generally avoid the legacy.

Misrepresentation. A false and fraudulent statement made by a party to a contract relative to a particular fact, knowing that the statement is untrue.

Misuser. The abuse of any liberty or benefit.

Money. The common medium of exchange in civilized nations.

Month. Generally in this country, where used in contracts, means a calendar month.

Monuments. Permanent land-marks indicating the boundaries of land.

Mortgage. A grant or conveyance of an estate or property to a creditor, for the security of a debt, and to become void on payment of such debt. The *mortgagor* is the one who gives the mortgage upon his property; the *mortgagee* the one to whom the mortgage is given.

Municipal. Of or belonging to a city; but *municipal law* is the name given to the system of law of any one nation or state.

Municipal Corporation. A public corporation created by the government for political purposes, as a county, town or city.

National Currency. National Bank bills.

Necessaries. Such things as are proper and necessary for the sustenance of man.

Negotiable Paper. An instrument as a bill or note, which may be transferred from one to another by assignment or indorsement.

Negotiation. In mercantile law, the act by which negotiable paper is put into circulation by being passed from one of the original parties to another.

Nominal Damages. Those given for the violation of a right from which no actual loss has resulted.

Non-Suit. The name of a judgment given against a plaintiff when he is unable to prove his case.

Nonuser. A failure to use rights and privileges.

Notary Public. An officer appointed variously under the laws of different States, whose acts are respected by the law-merchant and the law of nations, and hence have force out of their own State or country.

Notice of Protest, also called **Notice of Dishonor.** The notice given to a drawer or indorser of a bill, or an indorser of a negotiable note, by a subsequent party that it has been dishonored either by non-acceptance or non-payment.

Notice to Quit. A request of a landlard to his tenant to quit the premises.

Nuisance. Anything that unlawfully injures or damages a person in the enjoyment of life and property.

Nuncupative Will. An oral will declared by a testator at the point of death, before witnesses, and afterwards reduced to writing. The power to make nuncupative wills is usually confined to persons in the army or navy service.

Oath. A pledge given by the person taking it, that his promise is made under an immediate sense of his responsibility to God.

Open Policy. One in which there is no valuation of the thing insured.

Oral Contract. An agreement made by means of spoken words.

Ordinance. A rule, or order, or law. Usually applied to the acts or laws passed by the common council of a city.

Outlawed. A debt is said to be outlawed that has existed for a certain length of time, after which the law on that ground alone prevents its being enforced.

Par. Equality of value. Bills of exchange and stocks are at par when they sell for their face value. They are above or below par when they are worth more or less than their face value.

Parol Contract. Any agreement not under seal. It is often used as synonymous with oral contract.

Partners. The members of a firm or partnership. Dormant partners are those whose names are concealed from the public; ostensible partners are those whose names are held out to the public as the members of the firm; nominal partners are those who appear to the public as members of the firm but have no real interest.

Partnership. The relationship resulting from an agreement between two or more persons to place their money, effects, labor and skill, or some or all of them, in some enterprise or business, and divide the profits and bear the losses in certain proportions.

Party-Wall. A wall common to two adjoining estates.

Pawn. Same as *Pledge.*

Payee. The person to whom the payment of any kind of commercial paper is directed to be made.

Payment. The fulfillment of a promise, or the performance of an agreement, usually by the delivery of a sum of money.

Penalty. Forfeiture, or sum to be forfeited, for non-performance of an agreement.

Per Centum or Per Cent. By the hundred.

Perils of the Sea. All the dangers naturally incident to navigation.

Perjury. A willfully false statement, by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

Personal Property. Consists of such things as are movable, and may be taken by the owner wherever he goes.

Pledge. A bailment of personal property to secure the payment of some debt or the fulfillment of some agreement. The bailor is called the *pledgor*, and the bailee the *pledgee.*

Pledgee. A person in favor of whom some obligation is contracted, whether to pay money or to perform some act.

Pledgor. The person entering into an obligation to pay money or perform some act.

Policy. The written contract of insurance.

Poor Debtor. A person arrested or imprisoned for debt, and entitled to discharge upon making oath that he has no property with which to pay the debt. There are but few States in which arrest is allowed for an ordinary contract debt.

Post-Dated. Having a date subsequent to that at which it is actually made.

Power of Attorney. A written instrument under seal by which one party appoints another to be his attorney, and empowers such attorney to act for him.

Premium. The consideration or price paid for insurance.

Prescription. The right to a thing derived from immemorial usage.

Presumption. An inference of the law, from certain facts, of the existence or truth of some other fact or proposition.

Price. The consideration given in money for the purchase of a thing.

Prima Facie. Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contradicted.

Principal. (1) A party for whom another is authorized to do certain acts with third parties. (2) A sum of money at interest.

Privity of Contract. The relation which exists between two parties who have made a contract.

Probate of a Will. The proof given before a court or judge that an instrument produced as the will of a deceased person, is in fact what it purports to be.

Promissory Note. A written promise, signed by the person promising, to pay a certain sum of money at a certain time to a person named, or to his order, or to the bearer.

Prosecute. To proceed against by legal measures.

Protest. A formal declaration in writing by a notary public of the demand and refusal to pay a note or bill.

Proxy. (1) One who represents another. (2) A writing by which one authorizes another to vote in his place.

Public Enemies. Those who belong to a nation at war with another.

Puffer. Same as *By-Bidder*.

Quasi. As if; as though.

Quasi Corporation. A public body or municipal organization which is not vested with the general powers of corporations, but is recognized by a statute or usage as persons or aggregate corporations with the power of suing and being sued.

Quit Claim Deed. A form of deed in the nature of a release without covenants of any kind.

Ratification. Giving force to a contract made by the person in question, but not now in force, or by another man as his agent.

Real Covenant. A covenant connected with the conveyance of land, and which runs with the land, and which any owner of the land can enforce, although he be not a party to the instrument in which the covenant is contained.

Real Estate. Same as real property.

Real Property. That which is fixed or immovable, and includes land

and whatever is erected or growing upon it, with what is beneath or above the surface.

Realty. Same as real property.

Receipt. A written acknowledgment by one receiving money or other property that it has been received.

Receiver. Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

Recoupment. A reduction or diminution of damages in an action on contract for breach of warranty or defects in performance.

Recovery. The amount of the judgment which the party to an action recovers.

Re-enact. To enact anew.

Registry. The entering or recording of real estate conveyances in books of public record.

Reinsurance. Insurance effected by an insurance company to protect itself against insurance risks which it has assumed.

Release. An instrument in the general form of a deed that in distinct terms remits the claim to which it refers; and being under seal, although reciting only a nominal consideration, extinguishes the debt.

Remedy. The legal means employed to enforce a right or redress an injury.

Rent. Compensation for the use of real property. When stated in a lease it is called rent reserved.

Rescission. The annulling or dissolution of contracts by mutual consent, or by one party because of a breach of the contract by the other.

Respondentia Bond. The obligation given for a loan made upon the cargo of a vessel.

Revert. To fall again into the possession of the donor, or of the former proprietor.

Right of Survivorship. This means that the survivor or survivors take the right or interest of their deceased joint tenant, which in other cases would go to his heirs.

Riparian Owners. Those who own land bounded by a water course.

Salvage. Property saved from wreck or loss at sea; or compensation given for service rendered in saving it.

Satisfaction. Payment of a legal debt or demand; the discharging or cancelling of a judgment or a mortgage, by paying the amount of it.

Scrip. Certificate of stock.

Seal. An impression upon any impressible substance; or a piece of paper pasted on with intent to make a seal of it.

Sea-worthiness. The sufficiency of a vessel in materials, construction and equipment for the service in which it is employed. Sea-worthiness is an implied condition of marine insurance; unsea-worthiness defeats insurance.

Set of Exchange. The different parts of a bill of exchange taken together. Each part is a perfect instrument by itself, and the payment of any one avoids the others.

Set-Off. A claim which one party has against another who has a claim against him; a *counter-claim.*

Severalty. A state of separation. An estate in severalty is one held by one person in his own right.

Severance. The removal of fixtures from land.

Shipper. One who gives merchandise to another for transportation.

Shipping Articles. The agreement between the master of a vessel and the seamen determining the nature of the contract.

Slander. Injurious words spoken of another, but not published.

Slander of Title. A statement tending to injure the title of another by minifying or cutting it down.

Smart Money. Damages beyond the thing sued for, allowed on the ground that the offense may be so great that the offender ought to be made an example of.

Specialty. A contract under seal.

Specific Performance. The actual performance of a contract by the party bound to fulfill it.

Statute. An act of the Legislature.

Statute of Frauds. An English statute, generally re-enacted in this country, requiring certain contracts to be made in writing, designed to prevent fraud and perjury.

Statute of Limitations. A statute requiring an action to be commenced within a certain time after the demand has arisen. It *limits* the time to sue, hence its name.

Stock. Same as *Capital Stock.* It is also used to denote the shares into which the Capital Stock is divided.

Stockholder. The owner of one or more shares of the stock of a corporation.

Stoppage in Transitu. A stoppage, by the seller, of goods sold on credit before reaching their destination upon learning of the buyer's insolvency.

Stranger. In contracts a person who is not one of the parties to the contract.

Sub-Agent. A person appointed by an agent to perform some duty relating to the agency.

Sub-Contract. A contract made by one who has agreed to perform labor or service with a third party for the whole or part performance of that labor or service.

Subject-Matter. The thing to be done or omitted in a contract.

Subornation of Perjury. Inducing or procuring another to commit perjury.

Subrogation. The substitution of one person or thing in the place of

another, particularly the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter.

Suit. The prosecution of some claim or demand in a court of justice.

Surety. One who has agreed with another to make himself responsible for the debt, default, or misconduct of a third party. Similar to *guarantor*.

Suretyship. The liability or contract of a surety.

Surrender Value. The amount which an insurance company will pay for an unexpired policy.

Tare. An allowance in the purchase and sale of merchandise for the weight of the package in which the goods are contained. It may also be an allowance for the waste or diminution in the quality or quantity of the goods.

Tax Deed. A deed given by the officer of the law charged with the collection of taxes to the purchaser of land sold for taxes at a tax sale.

Tenant. One to whom another has granted for a period, the use of certain real estate.

Tender. An offer of a sum of money in satisfaction of a debt or claim, by producing and offering the amount to the creditor and declaring a willingness to pay it.

Testator. One who has died leaving a will.

Tonnage. The carrying capacity of a vessel.

Tort. A private wrong or injury other than the breach of a contract.

Trade Mark. The symbol, emblem or mark which a manufacturer puts upon the goods he manufactures.

Trespass. Any wrongful act of one person whereby another person is injured.

Trustee. One who holds property for the benefit of another.

Ultra Vires. The acts or proceedings of a corporation done beyond the scope of its powers.

Underwriter. Same as *Insurer*.

United States Note. A written promise to pay to the bearer on demand a certain sum of money, issued by the United States Government and used as money.

Usage. In mercantile law the well known uniform practice, or the manner of performance of an act or contract.

Use and Occupation. The liability of a tenant to pay a reasonable rent for the use and occupation of premises in case an agreement has been made for the use, but the rent not fixed.

Usury. Illegal interest.

Validity. Legal strength or force; the quality of being good in law.

Valued Policy. One which fixes the value of the property insured.

Vassal. One who held property of a superior or lord.

Vendee. One to whom anything is sold; a purchaser; a buyer.

Vendor. A seller; the person who sells a thing.

Vendor's Lien. The equitable lien allowed the seller of land until the whole purchase money is paid.

Void. Of no force or effect.

Voidable. That may be avoided; not absolutely void.

Wager Policy. A policy of insurance in which the insured person has no insurable interest.

Waiver. The abandonment of a right, or a refusal to accept it.

Ward. A minor under guardianship.

Warranty. An agreement to hold one's self responsible, if a certain thing does not turn out as represented.

Waste. Spoil or destruction done or permitted to land or the buildings by a tenant.

Wharfage. The compensation paid the owner of a wharf for the privilege of landing goods upon it, or loading from it.

Wharfinger. The owner of a wharf who maintains it for the purpose of receiving and shipping merchandise.

BUSINESS FORMS.

PROMISSORY NOTE—NON-INTEREST BEARING.

$125\frac{25}{100}$. DETROIT, Mich., June 30, 1891.

Sixty days after date, I promise to pay to the order of E. R. Andrews, One Hundred Twenty-five $\frac{25}{100}$ Dollars, at the Fourth National Bank, value received.

S. B. WILDER.

PROMISSORY NOTE—JOINT AND SEVERAL.

$6000. GENEVA, N. Y., Aug. 5, 1891.

One year after date, we jointly and severally promise to pay to the order of J. B. Ford, Six Thousand Dollars, value received, with interest.

S. B. MARTIN,
H. C. PARKER.

PROMISSORY NOTE—NOT NEGOTIABLE.

$246\frac{28}{100}$. DAYTON, OHIO, JUNE 4, 1891.

Six months after date, I promise to pay Horace G. Barton, Two Hundred Forty-six $\frac{28}{100}$ Dollars, value received, with use.

J. E. KLINE.

PROMISSORY NOTE—DEMAND.

$3000. CLIFTON, N. Y., Sept. 1, 1891.

On demand I promise to pay S. B. Smith, Three Thousand Dollars, value received, with interest.

W. S. HAMILTON.

JUDGMENT NOTE.

$800. BURLINGTON, Vt., Oct. 2, 1891.

Thirty days after date, I promise to pay R. W. Bradley, or order, Eight Hundred Dollars, with interest; and I do hereby confess judgment for the above sum, with interest and cost of suit, a release of all errors and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

R. J. CONWAY.

CHATTEL NOTE.

$300. NEWTON, Iowa, Feb. 16, 1891.

On or before July 1, 1891, for value received, I promise to pay Walter L. Jones, Three Hundred Dollars; to be paid said Jones at my warehouse by the delivery to him of wheat, corn and oats, at current prices, One Hundred Dollars worth of each of the kinds of grain mentioned.

JULIUS R. CHAMBERLAIN.

PROMISSORY NOTE—INDORSED.

$100. ST. PAUL, Minn., May 1, 1891.

Sixty days after date, I promise to pay to the order of H. W. Banning, One Hundred Dollars, at Fourth National Bank, New York City, value received.

WILLIAM H. WINSLOW.

(Blank Indorsement.)

H. W. BANNING.

(Full Indorsement by P. H. Sullivan, the holder.)

Pay to the order of E. R. Hatch.

P. H. SULLIVAN.

(Qualified Indorsement.)

Pay to the order of Henry H. Collins, without recourse to me.

E. R. HATCH.

(Restricted Indorsement.)

Pay to T. H. Lee only.

HENRY H. COLLINS.

(Waiver of Protest.)

"For value received I hereby waive demand, protest and notice of demand, and notice of non-payment on within note.

May 15, 1891. T. H. LEE.

SIGHT DRAFT.

552\frac{35}{100}$. BROCKPORT, N. Y., June 30, 1891.

At sight pay Edward Klix, or order, Five Hundred Fifty-two $\frac{35}{100}$ Dollars, value received, and charge to my account.

GEO. GRAVES.

To M. L. Culver,
Richmond, Va.

ACCOMMODATION NOTE—WITH INDORSEMENTS.

$175.00. PORTLAND, Me., July 18, 1891.

Three months after date I promise to pay to the order of ..... *myself,* .....

One Hundred Seventy-five ..... $\frac{00}{100}$ *Dollars, value received. Payable at Commercial Bank.*

F. D. LIVINGSTON.

Written across the back: *F. D. Livingston, W. C. Goddard.*

TIME DRAFT—ACCEPTED.

321\frac{15}{100}$. BUFFALO, N. Y., July 10, 1891.

At ten days' sight pay to Robert Thompson, or order, Three Hundred Twenty-one $\frac{15}{100}$ *Dollars, value received, and charge to my account.*

To Amos Deming,
Syracuse, N. Y.

JOHN D. MARVIN.

Written across the face of the draft: *Accepted, July 15, 1891, payable at First National Bank, Amos Deming.*

CHECK—CERTIFIED.

No. 1041. SPRINGFIELD, Mass., July 25, 1891.

FIRST NATIONAL BANK
of Springfield.

Pay to Cunningham & Co., or order, One Hundred Seventy-one $\frac{63}{100}$ *Dollars.*

171\frac{63}{100}$. EDWARDS & WHEELER.

Stamped or written across the face of the check: *Good, A. B. Allen, Teller.*

GUARANTY OF PAYMENT.

For value received, I hereby guarantee the payment of the within note.

W. B. WILSON.

GUARANTY OF COLLECTION.

For value received, I hereby guarantee the collection of the within note.

R. C. SPANTON.

RECEIPT—TO APPLY ON ACCOUNT.

$35.00. DAYTON, O., June 30, 1891.

Received of Henry B. Kane, Thirty-five Dollars, to apply on account.

UPTON & FAIRCHILD.

RECEIPT—IN FULL OF ALL DEMANDS.

113\frac{38}{100}$. CHARLESTON, S. C., April 1, 1891.

Received of Milton Barton, One Hundred Thirteen $\frac{38}{100}$ Dollars in full of all demands against him.

His
ENOS × SPINNING.
mark.

RECEIPT—TO APPLY ON NOTE.

$150.00. BINGHAMTON, N. Y., Sept. 5, 1891.

Received of Myron T. Bly, One Hundred Fifty Dollars to apply on his note, dated June 1, 1891, given to me, being the same payment which I have indorsed on said note.

E. R. PRITCHARD.

DUE BILL—PAYABLE IN MONEY.

$75.00. SYRACUSE, N. Y., Sept. 13, 1891.

Due Samuel R. Whitney, or order, Seventy-five Dollars.

W. B. FARNHAM.

DUE BILL—PAYABLE IN GOODS.

17\frac{25}{100}$. NEWARK, N. J., Oct. 2, 1891.

Due F. C. Henderson Seventeen Dollars in goods from my store.

C. B. CHEESMAN.

EMPLOYMENT CONTRACT.

This agreement made and entered into at Richland, Wisconsin, this twentieth day of February, 1891, by and between Jerome B. Green, farmer, and Clayton Hopkins, laborer, both of Richland, Wis., provides as follows:

First.—*That said Hopkins shall work as a farm hand on the premises of said Green, and as directed, in the usual manner, and for the usual hours accustomed in farm business, for the period of one year from date hereof.*

Second.—*For the services provided for, said Green agrees that during said year the said Hopkins may become as one of said Green's family, boarding and lodging therewith, and having all the usual privileges of farm laborers, and at the completion of the year's labor Green shall pay to Hopkins the sum of two hundred and forty (240) dollars in full for his services.*

Third.—*Neither party hereto shall have a right to terminate this contract before the expiration of the time, except for cause.*

Witness, LOUIS H. BARNES. *Signed,* JEROME B. GREEN, CLAYTON HOPKINS.

STOCK CERTIFICATE.

No. 185. Shares, 100.

THE AMERICAN BUGGY COMPANY.

This is to Certify, that Elmer Sherwin *is entitled to* One Hundred (100) *shares of the Capital Stock of* THE AMERICAN BUGGY CO., *of Hartford, Conn., transferable in person or by attorney, on the books of said Company only upon the surrender of this Certificate.*

In Witness Whereof, *the said Company has caused this Certificate to be signed by its President and Treasurer.*

Dated, Hartford, Conn., July 11, 1891.

BYRON LLOYD, *Treasurer.* FRANK L. JENNINGS, *President.*

TRANSFER OF STOCK.

(Back of Certificate.)

For value received, I hereby assign and transfer to M. E. JONES 100 *shares of the Capital Stock represented by the within Certificate, and do hereby constitute and appoint* DANIEL OSBORNE, *Attorney, to transfer the said stock on the books of the within-named Company, with full power of substitution in the premises.*

ELMER SHERWIN.

Date, July 14, 1891.

Signed in the presence of

M. D. BROWN.

PROTEST.

State of New York,
UNITED STATES OF AMERICA. } *ss.*

To all *to whom these presents shall come.* **Be it Known,** *That on the tenth day of July, in the year of our Lord one thousand eight hundred and ninety-one, at the request of* **The Holders** *thereof, I, C. B. Banning, Notary Public, duly commissioned and sworn, dwelling in the City of Albany, did present the original note, hereunto annexed, to the teller at Traders National Bank, in this City (where the same is payable) and did demand payment thereof, which was refused.*

Whereupon, *I, the said Notary, at the request aforesaid, did* **Protest,** *and by these presents do publicly and solemnly* **Protest** *as well against the Maker and Indorsers of the said note, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, already incurred, and hereafter to be incurred, for want of payment of the said note.*

Thus Done and Protested, *at Albany, N. Y., the day and year first above written.*

In Testimonium Veritatis:

C. B. BANNING,
Notary Public.

Please give notice of this Protest to all parties to the within Note as soon as you receive this.

Back of Protest.

Protest.

Charles Burke
For
Simpson & Co.

$75\frac{25}{100}$.

Dated July 10, 1891.

Fees and Disbursements, $1.25.

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BUSINESS FORMS.

This is a temporary receipt, and can be surrendered in exchange for the Company's Bill of Lading under the terms of which the shipment is made and the goods accepted by the carrier.

SHIPPING RECEIPT.

Buffalo Station, July 11, 1891.

Received from Knapp & Co.,

By Buffalo, Rochester & Pittsburgh Railway Company

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to the said destination, if on its road, otherwise to deliver to another carrier on the route to said destination.

It is mutually agreed, in consideration of the freight charged for this service, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, shown or endorsed on face or back hereon, and which are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

MARKS, CONSIGNEES, AND DESTINATION	Not Negotiable.	DESCRIPTION OF ARTICLES.	WEIGHT. SUBJECT TO CORRECTION.
R. W. Beckwith,		*2 bxs. Mdse.*	*550 lbs.*
Pittsburgh,			
Pa.			

Subject to the conditions endorsed on back of this receipt.

For Buffalo, Rochester & Pittsburgh Railway Company.

W. B. Smith, Freight Agent.

☞ Note conditions on back of this receipt.

ABSTRACT OF TITLE.

Examination of Title
to
part of section No. 35, Township No. 32 S., Range No. 27 E., State of Florida.

1.

The United States of America to Hamilton Disston.	*Land Patent Certificate No. 10715.* *Dated, March 30, 1875.* *Consideration $10,000.00.* *Recorded, April 20, 1875, in book J of deeds, at page 35.*

Conveys said section 35, with other property.

2.

Hamilton Disston and wife to The Florida Land and Improvement Company.	*Quit Claim deed.* *Dated May 2, 1880.* *Consideration $5,000.00.* *Recorded, May 20, 1880, in book K of deeds, at page 53.*

Conveys said Sec. 35, with other property.

3.

The Florida Land and Improvement Company to Arthur G. Clement.	*Warranty deed.* *Dated, April 1, 1885.* *Consideration $500.00.* *Recorded, April 10, 1885, in book K of deeds, at p. 351.*

Conveys the N. W. quarter of the S. W. quarter of said section 35, containing 40 acres according to the government survey.

I, Geo. W. Hendry, Clerk of the Circuit Court, in and for the County of DeSoto, State of Florida, hereby certify that I have carefully examined the records in my office, and I find nothing of record affecting the title of the premises described in No. 3, in the foregoing abstract, from and including March 30, 1875, in the names of Hamilton Disston, The Florida Land and Improvement Co., and Arthur G. Clement, other than is set forth in the foregoing three abstracts, and I further certify that I find no judgments, mortgages or liens, or incumbrances, from and including said date, against said persons and premises, excepting as is hereinbefore set forth, to and including this date.

Dated, June 1, 1891. GEO. W. HENDRY,

[SEAL.] *Clerk of the Circuit Court.*

ARTICLES OF COPARTNERSHIP.

Articles of Copartnership *made this 1st day of June, 1891, between Daniel R. Clark and Charles F. Crandall, both of the City of Buffalo, N. Y., witnesseth:*

I. The parties above named have agreed to become copartners in business, and do hereby agree to be copartners under the firm name of Clark and Crandall, in the business of manufacturing, buying and selling paints, oils and painters' supplies, and conducting a general paint and oil store in said City of Buffalo.

II. The partnership hereby formed shall commence at the date hereof and continue for the term of five years, unless sooner dissolved by the operation of law.

III. Said Crandall shall contribute to the partnership capital the sum of Twenty-five (25) Thousand Dollars in cash, and said Clark shall contribute the sum of Five (5) Thousand Dollars in cash, and his skill and knowledge of the business, and the contribution of said Clark as aforesaid is deemed equal to the contribution of said Crandall.

IV. It is agreed that said Clark shall devote his whole time and energy to the conduct of the business and the futherance of its success, but said Crandall shall not be under obligation to devote more than one-half of his time in attention to the partnership business, and each of said partners may draw out of the business not to exceed $25 weekly for personal expenses.

V. It is agreed that each of said partners shall pay and discharge equally all rents and expenses of conducting the business, and all gains and profits which shall arise from the business shall be equally divided after the payment and discharge of all losses by ill commodities, bad debts, or otherwise, and all such losses, and all losses arising from the conduct of the business shall be born and shared equally between the partners.

VI. It is mutually agreed that true books of account shall be kept wherein each of the said partners shall enter all moneys by them or either of them received, paid, laid out or expended in and about said business, as also all goods, wares and merchandise by them or either of them bought or sold, by reason or on account of said business, and all matters and things whatsoever pertaining to said business, and that either of said partners

shall at all times have free and uninterrupted access to said books, and at the end of each quarter hereafter, each of said partners shall make and render to the other a true and correct account of all profits and increase by them or either of them made, and of all losses by them or either of them sustained, and of all payments, receipts and disbursements whatsoever connected with said business.

VII. It is further agreed that neither of said partners, during the conduct of said business, shall indorse any note or become surety for any person without the consent of the other, and neither of said partners shall give the firm note without the knowledge and consent of the other.

VIII. It is mutually agreed that at the end of said partnership each of said partners shall make and render to the other a just and final account of all things relating to the said business, and there shall be an equal division of the partnership capital and the increase thereof, and an equal bearing and sharing of the losses and liabilities.

In Witness whereof, *the parties hereto have hereunto set their hands and seals in duplicate, the day and year first above written.*

DANIEL R. CLARK. [SEAL.]
CRARLES F. CRANDALL. [SEAL.]

CHATTEL MORTGAGE.

To All to Whom these Presents Shall Come: *Know Ye, That I,* JOHN MCLACHLAN, *of Lyons, County of Wayne, N. Y., am indebted unto* GEORGE G. WANZER, *of Palmyra, in the sum of three hundred and ten dollars and fifty cents, being for the rent of the farm now occupied by me, and seed wheat furnished to me by said* WANZER.

Now for securing the payment of said debt, and the interest thereon from the date hereof, to the said GEORGE G. WANZER, *I do hereby sell, transfer and assign to the said* WANZER *the property described in the following schedule, viz.:*

One top buggy, one lumber wagon, and one yoke of red oxen:

Provided always, and this mortgage is on the express condition, that if the said JOHN MCLACHLAN *shall pay to the said* GEORGE G. WANZER, *his assigns or representatives, the sum of three hundred and ten dollars and fifty cents, with*

interest thereon, six months from date, which the said JOHN MCLACHLAN *hereby agrees to pay, then this transfer to be void and of no effect; but in case of non-payment of the said debt and interest at the time above mentioned, then the said* GEORGE G. WANZER *shall have full power to enter upon the premises of the said party of the first part, or any other place or places where the goods and chattels aforesaid may be (to take possession of said property); to sell the same at public or private sale, and the avails (after deducting all expenses of the sale and keeping of the said property) to apply in payment of the above debt; and in case the said* GEORGE G. WANZER *shall at any time deem said property or debt unsafe, it shall be lawful for him to take possession of such property and to sell the same at public or private sale previous to the time above mentioned for the payment of said debt, applying the proceeds as aforesaid, after deducting all expenses for the sale and keeping of the said property. And the said mortgagee, his representatives or assigns, may purchase at any such sale, in the same manner and to the same effect as a person not interested herein.*

If from any cause said property shall fail to satisfy said debt, interest, costs and charges, I covenant and agree to pay the deficiency.

In Witness Whereof, *I have hereunto set my hand and seal the 15th day of September, in the year of our Lord one thousand eight hundred and ninety-one.*

Sealed and delivered in presence of } JOHN MCLACHLAN. [SEAL.]
AMOS H. COOLIDGE, *Lyons, N. Y.*

It is usual to have a chattel mortgage acknowledged, and it is advisable that it should be. The form of acknowledgment already given may be used (p. 58). It is necessary to file a chattel mortgage in the office of the town clerk of the town where the property is situated, or in such other office as may be designated by law, in order to make such mortgage valid as against subsequent claimants and purchasers in good faith.

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